



## Council Communication

**TO:** HONORABLE MAYOR AND COUNCILMEMBERS

**FROM:** CATHY TEMPLETON, TOWN CLERK 503-6861

**THROUGH:** PATRICK BANGER, TOWN MANAGER

**MEETING DATE:** OCTOBER 4, 2012

**SUBJECT:** LIQUOR LICENSE – SWEET TOMATOES #110

<b>STRATEGIC INITIATIVE:</b>	N/A
<b>LEGAL REVIEW</b>	<b>FINANCIAL REVIEW</b>
<input type="checkbox"/> Complete	<input type="checkbox"/> Complete
<input checked="" type="checkbox"/> N/A	<input checked="" type="checkbox"/> N/A

### RECOMMENDED MOTION

A MOTION TO ISSUE AN ORDER TO RECOMMEND APPROVAL OF A SERIES 12 RESTAURANT LIQUOR LICENSE FOR SWEET TOMATOES #110 LOCATED AT 4928 SOUTH POWER ROAD.

OR

A MOTION TO ISSUE AN ORDER TO RECOMMEND DENIAL OF A SERIES 12 RESTAURANT LIQUOR LICENSE FOR SWEET TOMATOES #110 LOCATED AT 4928 SOUTH POWER ROAD FOR THE FOLLOWING REASONS (SPECIFIC REASONS FOR DENIAL MUST BE INCLUDED).

OR

A MOTION TO MAKE NO RECOMMENDATION ON A SERIES 12 RESTAURANT LIQUOR LICENSE FOR SWEET TOMATOES #110 LOCATED AT 4928 SOUTH POWER ROAD (A "NO RECOMMENDATION" MAY RESULT IN A HEARING; THE HEARING MAY BE CANCELLED IF THE BOARD OR AN AGGRIEVED PARTY DOES NOT REQUEST A HEARING).

## **BACKGROUND/DISCUSSION**

Natalie Lahr is requesting approval of a Series 12 Restaurant Liquor License for Sweet Tomatoes #110 located at 4928 South Power Road. *This is a new license.*

A Series 12 Restaurant Liquor License allows the holder of a restaurant license to sell and serve spirituous liquor solely for consumption on the premises of an establishment which derives at least forty percent (40%) of its gross revenue from the sale of food. *Series 12 licenses are exempt from the 300 foot distance requirement from a church, a school building with any grades K-12 or a fenced recreational area adjacent to a school building.*

Public notice was posted for the required 20-day period in accordance with the Arizona Department of Liquor License and Control posting requirement. No adverse information to justify a denial of this application was received from Planning and Zoning, Building and Code Compliance, Police Department, or from Maricopa County Environmental Services Department. There were no liquor related conditions in the zoning ordinance for this site.

Council's recommendation will be forwarded to the Arizona Department of Liquor License & Control. If Council recommends denial of an application, the minutes must reflect specific reasons, testimony, and other evidence that supports the motion to deny the license applications as required by A.R.S. 4-201.E further defined by Rule R19-1-102 (Attachment 1).

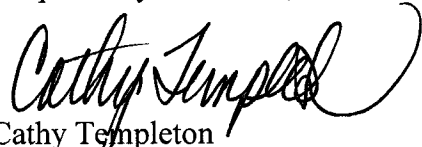
## **FINANCIAL IMPACT**

The license fee for a Series 12 Restaurant Liquor License is \$750 per year.

## **STAFF RECOMMENDATION**

Staff feels such requests are solely Council's prerogative and offers no recommendation on this request.

Respectfully submitted,



Cathy Templeton  
Town Clerk

Attachments/Enclosures:

- Attachment 1 – Arizona Department of Liquor Licenses & Control,  
Rule R19-1-102
- Attachment 2 – Liquor License Application

# **Attachment 1**

## R19-1-102. Granting a License for a Certain Location

Local governing authorities and the Department may consider the following criteria in determining whether public convenience requires, and that the best interest of the community will be substantially served by the issuance or transfer of a liquor license at a particular unlicensed location:

1. Petitions and testimony from persons in favor or opposed to the issuance of a license who reside in, own or lease property in close proximity.
2. The number and series of licenses in close proximity.
3. Evidence that all necessary licenses and permits have been obtained from the state and all governing bodies.
4. The residential and commercial population of the community and its likelihood of increasing, decreasing or remaining static.
5. Residential and commercial population density in close proximity.
6. Evidence concerning the nature of the proposed business, its potential market and its likely customers.
7. Effect on vehicular traffic in close proximity.
8. The compatibility of the proposed business with other activity in close proximity.
9. The effect or impact of the proposed premises on businesses or the residential neighborhood whose activities might be affected by granting the license.
10. The history for the past five years of liquor violations and reported criminal activity at the proposed premises provided that the applicant has received a detailed report(s) of such activity at least 20 days before the hearing by the board.
11. Comparison of hours of operation of the proposed premises to the existing businesses in close proximity.

Attachment 2

35D  
RECEIVED

SEP 4 / 2012

CITY OF MESA  
LICENSING OFFICE

Arizona Department of Liquor Licenses and Control

800 West Washington, 5th Floor

Phoenix, Arizona 85007

www.azliquor.gov

602-542-5141

RECEIVED

SEP 10 2012

TOWN OF GILBERT

DEVELOPMENT SERVICES

## APPLICATION FOR LIQUOR LICENSE

TYPE OR PRINT WITH BLACK INK

Notice: Effective Nov. 1, 1997, All Owners, Agents, Partners, Stockholders, Officers, or Managers actively involved in the day to day operations of the business must attend a Department approved liquor law training course or provide proof of attendance within the last five years. See page 5 of the Liquor Licensing requirements.

## SECTION 1 This application is for a:

- ☐ MORE THAN ONE LICENSE  
☐ INTERIM PERMIT *Complete Section 5*  
☒ NEW LICENSE *Complete Sections 2, 3, 4, 13, 14, 15, 16*  
☐ PERSON TRANSFER (Bars & Liquor Stores ONLY)  
*Complete Sections 2, 3, 4, 11, 13, 15, 16*  
☐ LOCATION TRANSFER (Bars and Liquor Stores ONLY)  
*Complete Sections 2, 3, 4, 12, 13, 15, 16*  
☐ PROBATE/WILL ASSIGNMENT/DIVORCE DECREE  
*Complete Sections 2, 3, 4, 9, 13, 16 (fee not required)*  
☐ GOVERNMENT *Complete Sections 2, 3, 4, 10, 13, 15, 16*

## SECTION 2 Type of ownership:

- ☐ J.T.W.R.O.S. *Complete Section 6*  
☐ INDIVIDUAL *Complete Section 6*  
☐ PARTNERSHIP *Complete Section 6*  
☒ CORPORATION *Complete Section 7*  
☐ LIMITED LIABILITY CO. *Complete Section 7*  
☐ CLUB *Complete Section 8*  
☐ GOVERNMENT *Complete Section 10*  
☐ TRUST *Complete Section 6*  
☐ OTHER (Explain) \_\_\_\_\_

## SECTION 3 Type of license and fees LICENSE #(s):

1. Type of License(s): Restaurant, Series 12

2. Total fees attached:

Department Use Only

\$ 232.00

**APPLICATION FEE AND INTERIM PERMIT FEES (IF APPLICABLE) ARE NOT REFUNDABLE.**The fees allowed under A.R.S. 44-6852 will be charged for all dishonored checks.

## SECTION 4 Applicant

1. Owner/Agent's Name: Mr. Lahr Natalie Burt  
 (Insert one name ONLY to appear on license) Last First Middle
2. Corp./Partnership/L.L.C.: Garden Fresh Restaurant Corp.  
 (Exactly as it appears on Articles of Inc. or Articles of Org.)
3. Business Name: Sweet Tomatoes #110  
 (Exactly as it appears on the exterior of premises)
4. Principal Street Location: 4928 S. Power Road Mesa Maricopa 85212  
 (Do not use PO Box Number) City County Zip
5. Business Phone: 480-333-0022 Daytime Contact: [REDACTED]
6. Is the business located within the incorporated limits of the above city or town? ☒ YES ☐ NO
7. Mailing Address: 15822 Bernardo Center Drive, Suite A, San Diego CA 92127  
 City State Zip
8. Price paid for license only bar, beer and wine, or liquor store: Type \$ Type \$

## DEPARTMENT USE ONLY

Fees: 100.00 Application Interim Permit Agent Change Club 132.00 Finger Prints \$ 232.00  
**TOTAL OF ALL FEES**

Is Arizona Statement of Citizenship & Alien Status For State Benefits complete? ☒ YES ☐ NO

Accepted by: JB Date: 08-29-12 Lic. # 12079241

35232

300693

**SECTION 5 Interim Permit:**

1. If you intend to operate business when your application is pending you will need an Interim Permit pursuant to A.R.S. 4-203.01.
2. There **MUST** be a valid license of the same type you are applying for currently issued to the location.
3. Enter the license number currently at the location. \_\_\_\_\_
4. Is the license currently in use? ☐ YES ☐ NO If no, how long has it been out of use? \_\_\_\_\_

**ATTACH THE LICENSE CURRENTLY ISSUED AT THE LOCATION TO THIS APPLICATION.**

I, \_\_\_\_\_, declare that I am the CURRENT OWNER, AGENT, CLUB MEMBER, PARTNER,  
(Print full name)  
MEMBER, STOCKHOLDER, OR LICENSEE (circle the title which applies) of the stated license and location.

State of \_\_\_\_\_ County of \_\_\_\_\_

X \_\_\_\_\_  
(Signature)

The foregoing instrument was acknowledged before me this

My commission expires on: \_\_\_\_\_

\_\_\_\_\_ day of \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

**SECTION 6 Individual or Partnership Owners:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

**1. Individual:**

Last	First	Middle	% Owned	Mailing Address	City	State	Zip

Partnership Name: (Only the first partner listed will appear on license) \_\_\_\_\_

General-Limited	Last	First	Middle	% Owned	Mailing Address	City	State	Zip
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								
<input type="checkbox"/> <input type="checkbox"/>								

) Y R A S S E C E N F I T

2. Is any person, other than the above, going to share in the profits/losses of the business? ☐ YES ☐ NO  
If Yes, give name, current address and telephone number of the person(s). Use additional sheets if necessary.

Last	First	Middle	Mailing Address	City, State, Zip	Telephone#

**SECTION 7 Corporation/Limited Liability Co.:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

☒ CORPORATION **Complete questions 1, 2, 3, 5, 6, 7, and 8.**☐ L.L.C. **Complete 1, 2, 4, 5, 6, 7, and 8.**

1. Name of Corporation/L.L.C.: Garden Fresh Restaurant Corp  
(Exactly as it appears on Articles of Incorporation or Articles of Organization)
2. Date Incorporated/Organized: 02-17-1993 State where Incorporated/Organized: Delaware
3. AZ Corporation Commission File No.: F-0060367-3 Date authorized to do business in AZ: 02-17-1993
4. AZ L.L.C. File No: N/A Date authorized to do business in AZ: N/A
5. Is Corp./L.L.C. Non-profit? ☐ YES ☒ NO
6. List all directors, officers and members in Corporation/L.L.C.:

Last	First	Middle	Title	Mailing Address	City	State	Zip
Goronkin, David			Director	15822 Bernardo Center Dr., Ste A, San Diego, CA 92127			
Keller, Robert G			President	15822 Bernardo Center Dr., Ste A, San Diego, CA 92127			
Morberg, John David			Treasurer	15822 Bernardo Center Dr., Ste A, San Diego, CA 92127			
Salerno, Kathleen Elizabeth			Asst Sec	15822 Bernardo Center Dr., Ste A, San Diego, CA 92127			

(ATTACH ADDITIONAL SHEET IF NECESSARY)

7. List stockholders who are controlling persons or who own 10% or more:

Last	First	Middle	% Owned	Mailing Address	City	State	Zip
GF Holdings, Inc.			100%	15822 Bernardo Center Dr., Ste A, San Diego, CA 92127			

(ATTACH ADDITIONAL SHEET IF NECESSARY)

8. If the corporation/L.L.C. is owned by another entity, attach a percentage of ownership chart, and a director/officer/member disclosure for the parent entity. Attach additional sheets as needed in order to disclose personal identities of all owners.

**SECTION 8 Club Applicants:**

EACH PERSON LISTED MUST SUBMIT A COMPLETED QUESTIONNAIRE (FORM LIC0101), AN "APPLICANT" TYPE FINGERPRINT CARD, AND \$22 PROCESSING FEE FOR EACH CARD.

1. Name of Club: \_\_\_\_\_ Date Chartered: \_\_\_\_\_  
(Exactly as it appears on Club Charter or Bylaws) (Attach a copy of Club Charter or Bylaws)
2. Is club non-profit? ☐ YES ☐ NO
3. List officer and directors:

Last	First	Middle	Title	Mailing Address	City	State	Zip

(ATTACH ADDITIONAL SHEET IF NECESSARY)

August 9, 2012

Arizona Department of Liquor Licenses & Control  
800 West Washington, 5<sup>th</sup> Floor  
Phoenix, AZ 85007

To Whom It May Concern:

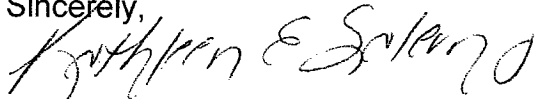
Please be advised that Garden Fresh Restaurant Corp. is wholly owned (100%) by GF Holdings, Inc.

Officers of GF Holdings, Inc.:

David Goronkin	Director and Chief Executive Officer
John D. Morberg	Chief Financial Officer, General Counsel, Treasurer & Secretary
R. Gregory Keller	Vice President
Kathleen Salerno	Assistant Secretary

If I can be of further assistance, please contact me directly at (858) 312-1955.

Sincerely,



Kathleen E. Salerno  
Assistance Secretary

OK C13  
8/29/2012

Souplantation & Sweet tomatoes

salads • soups • bakery

VIA EMAIL [Jennifer.benson@azliquor.gov](mailto:Jennifer.benson@azliquor.gov)

August 28, 2012

Jennifer Benson  
Customer Service Representative  
Arizona Department of Liquor License and control  
800 Washington St, 5<sup>th</sup> Floor  
Phoenix, AZ 85007

**RE: GARDEN FRESH RESTAURANT ALCOHOL LICENSE APPLICATION**

Dear Jennifer:

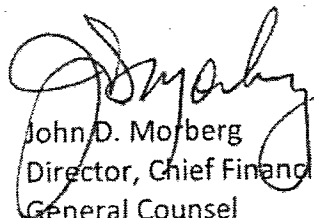
Per our telephone discussion, we are responding to your request for information related to the corporate history from 1995, when Garden Fresh Restaurant Corp. ("the Company") maintained an alcohol license with the state of Arizona, and the current corporate structure.

The Company was a private entity before going public on May 24, 1995 with its shares traded under the ticker symbol NASDAQ: LTUS. Subsequently, on March 10, 2004, the Company went private pursuant to a merger and recapitalization transaction when an affiliate of Centre Partners Management LLC and Fairmont Capital, Inc. (collectively "Centre Partners"), purchased all of the Company's shares then traded in the public market. That transaction resulted in the creation of GF Holdings, Inc., the sole shareholder of the Company. Additionally, on October 18, 2005, Centre Partners sold its interest in GF Holdings, Inc to an affiliate of Sun Capital Partners, Inc.

As of today, GF Holdings, Inc. remains the sole shareholder of the Company.

We hope that this information assists you in completing your review of our application, and we remain ready to respond to any questions.

Very truly yours,



John D. Morberg  
Director, Chief Financial Officer and  
General Counsel

cc: Kathleen Salerno

12 AUG 29 11:14 AM '12

**SECTION 9 Probate, Will Assignment or Divorce Decree of an existing Bar or Liquor Store License:**

1. Current Licensee's Name: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle
2. Assignee's Name: \_\_\_\_\_  
Last First Middle
3. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_ Date of Last Renewal: \_\_\_\_\_
4. ATTACH TO THIS APPLICATION A CERTIFIED COPY OF THE WILL, PROBATE DISTRIBUTION INSTRUMENT, OR DIVORCE DECREE THAT SPECIFICALLY DISTRIBUTES THE LIQUOR LICENSE TO THE ASSIGNEE TO THIS APPLICATION.

**SECTION 10 Government: (for cities, towns, or counties only)**

1. Governmental Entity: \_\_\_\_\_
2. Person/designee: \_\_\_\_\_  
Last First Middle Contact Phone Number

**A SEPARATE LICENSE MUST BE OBTAINED FOR EACH PREMISES FROM WHICH SPIRITUOUS LIQUOR IS SERVED.**

**SECTION 11 Person to Person Transfer:**

Questions to be completed by CURRENT LICENSEE (Bars and Liquor Stores ONLY-Series 06,07, and 09).

1. Current Licensee's Name: \_\_\_\_\_ Entity: \_\_\_\_\_  
(Exactly as it appears on license) Last First Middle (Indiv., Agent, etc.)
2. Corporation/L.L.C. Name: \_\_\_\_\_  
(Exactly as it appears on license)
3. Current Business Name: \_\_\_\_\_  
(Exactly as it appears on license)
4. Physical Street Location of Business: Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
5. License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
6. If more than one license to be transferred: License Type: \_\_\_\_\_ License Number: \_\_\_\_\_
7. Current Mailing Address: \_\_\_\_\_  
(Other than business) Street \_\_\_\_\_  
City, State, Zip \_\_\_\_\_
8. Have all creditors, lien holders, interest holders, etc. been notified of this transfer? ☐ YES ☐ NO
9. Does the applicant intend to operate the business while this application is pending? ☐ YES ☐ NO If yes, complete Section 5 of this application, attach fee, and current license to this application.

10. I, \_\_\_\_\_, hereby authorize the department to process this application to transfer the  
(print full name)

privilege of the license to the applicant, provided that all terms and conditions of sale are met. Based on the fulfillment of these conditions, I certify that the applicant now owns or will own the property rights of the license by the date of issue.

I, \_\_\_\_\_, declare that I am the CURRENT OWNER, AGENT, MEMBER, PARTNER  
(print full name)  
STOCKHOLDER, or LICENSEE of the stated license. I have read the above Section 11 and confirm that all statements are true, correct, and complete.

\_\_\_\_\_  
(Signature of CURRENT LICENSEE)

State of \_\_\_\_\_ County of \_\_\_\_\_  
The foregoing instrument was acknowledged before me this

My commission expires on: \_\_\_\_\_

\_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
(Signature of NOTARY PUBLIC)

**~~APPLICANTS CANNOT OPERATE UNDER A LOCATION TRANSFER UNTIL IT IS APPROVED BY THE STATE~~**

**SECTION 13** Questions for all in-state applicants excluding those applying for government, hotel/motel, and restaurant licenses (series 5, 11, and 12):

d) Fenced playing area of a golf course (§ 4-207 (B)(5))

5

12 AUG 20 1:47 PM 10:00

**GILBERT GATEWAY TOWNE CENTER  
PHASE I  
GROUND LEASE**

by and between

**POWER & RAY, LLC,**  
an Arizona limited liability company  
("Lessor")

and

**GARDEN FRESH RESTAURANT CORP.,**  
a Delaware corporation  
("Lessee")

For premises referred to as Pad "C"  
and located at Gilbert Gateway Towne Center-Phase I  
Town of Gilbert, Maricopa County, Arizona

(04/05) AZ

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12 AUG 20 1997. Dept #1000  
EXHIBITS

A	=	Demised Premises
B	=	Site Plan of the Shopping Center
B-1	=	Legal Description of Shopping Center
C	=	Sign Criteria
D	=	Memorandum of Ground Lease
E	=	Subordination of Landlord's Liens
F	=	Form of Lessee Estoppel Certificate
G	=	Uniform Commercial Code Financing Statement
H	=	Special Construction Provisions
I	=	Memorandum of Commencement Date
J	=	Schedule of Plans and Specifications
K	=	Form of Subordination, Non-Disturbance and Attornment Agreement
L	=	Insurance Certificate
M	=	Intentionally Omitted

## EXHIBIT B SITE PLAN OF THE SHOPPING CENTER SHALL IDENTIFY:

- Demised Premises
- Staging Area
- Construction Entrance
- Lessee Maintenance Area

GILBERT GATEWAY TOWNE CENTER  
PHASE I  
GROUND LEASE

THIS GILBERT GATEWAY TOWNE CENTER PHASE I GROUND LEASE is made and entered into as of the 30 day of May, 2006 (the "Effective Date"), by and between POWER & RAY, LLC, an Arizona limited liability company ("Lessor"), and GARDEN FRESH RESTAURANT CORP., a Delaware corporation ("Lessee").

WITNESSETH:

ARTICLE I

DEFINITIONS

§1.01. The following terms used in this Lease shall have the meanings described below:

**Affiliate.** Any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with another Person which, in the case of a partnership, shall include each of the general partners thereof and in the case of a limited liability company, shall include each manager or member thereof.

**Breakpoint.** Three Million and No/100 Dollars (\$3,000,000.00) per annum.

**Building.** The building now or at any time hereafter erected or situated upon the Demised Premises during the Lease Term other than Removable Personal Property, and any and all renewals, replacements, additions and substitutions thereto.

**Common Areas.** Those portions of the Shopping Center not designated as "**Building Areas**" or "**Future Building Areas**" in the Declarations and defined as "**Common Areas**" in the Declarations. The Site Plan attached to this Lease as **Exhibit "B"** shows, among other things, the principal improvements which will comprise the Shopping Center. Lessee agrees that the Site Plan is tentative and subject to the further provisions of this Lease, Lessor shall have the right at all times, in its sole discretion, to change the size, location, elevation, nature and/or use of any portion or all of the Common Areas, the Shopping Center or any part thereof as Lessor may from time to time determine, including the right to change the size thereof, to erect buildings thereon, to sell or lease part or parts thereof, to change the location and size of the landscaping and buildings within the Shopping Center and to make additions to, subtractions from or rearrangements of such buildings; provided that Lessor shall not materially and adversely affect (i) the visibility of Lessee's building or signage, or (ii) access to and from the Demised Premises; or (iii) except to the extent required by governmental authorities having jurisdiction, permanently modify the Common Areas located in Lessee's Protected Area (identified as such on the Site Plan); in each case without Lessee's consent, which consent shall not be unreasonably withheld or delayed. In addition, Lessor shall not change the size or location of the Demised Premises. Lessor may, in its sole discretion, change the name of the Shopping Center, the location of other lessees (but not Lessee) and the nature of any occupancy of any premises (but not the Demised Premises) in the Shopping Center at any time, except only as expressly provided otherwise in this Lease.

**Control.** The possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person.

**CPI.** The United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all Urban Consumers (CPI-U), U.S. City Average (1982-1984=100). If at any time there shall not exist the CPI, Lessor may substitute any official index published by the Bureau of Labor Statistics or by a successor or similar government agency as may then be in existence and which in Lessor's reasonable business judgment shall be most nearly equivalent thereto.

**Declarations.** Together, that certain (i) Operation and Easement Agreement dated December 3, 2003 executed by Lessor and Target Corporation, a Minnesota corporation and recorded on December 3, 2003 in the Official Records of Maricopa County, Arizona as Instrument No. 2003-1651215, and (ii) all amendments, modifications, extensions and renewals thereof; all of which shall be superior to this Lease, binding upon the Shopping Center and run with the land.

**Default Rate.** The rate of interest per annum equal to the lesser of (i) the Prime Rate (as hereinafter defined) plus six (6) percentage points per annum, or (ii) the highest lawful rate, if any. The Default Rate shall be adjusted with each adjustment in the Prime Rate.

**Demised Premises.** The real property, exclusive of the Building and Improvements, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, consisting of approximately 46,671.7145 square feet and depicted as "Pad C" on the Site Plan, together with the easements, rights, privileges and appurtenances thereto.

**Development Agreement.** That certain Amended and Restated Development Agreement by and between the Town of Gilbert and Lessor dated October 28, 2003, recorded in the Maricopa County Recorder's Office on November 27, 2003 as Instrument No. 2003-1551583.

**Event of Default.** The occurrence of any event described in Article 17.

**Extended Lease Term.** The two (2) additional periods of five (5) years each commencing upon the expiration of the Initial Lease Term (or the prior Extended Lease Term, as the case may be), when exercised by Lessee in accordance with the provisions of §2.02.

**Floor Area.** All areas for the exclusive use and occupancy by a lessee of Lessor, measured from the exterior surface of exterior walls (and from the extensions thereof, in the case of openings) and from the center of interior demising partitions, and shall include, but not be limited to restrooms, mezzanines (excluding, however, the upper levels of mezzanines), warehousing or storage areas (excluding, however, the upper levels of multi-level storage areas), clerical or office areas and employee areas. With respect to any movie theater, the term "Floor Area" shall not be deemed to include mezzanines, stadium seating areas, projector rooms, box offices or exterior stairways. In addition, there shall be expressly excluded from the term "Floor Area" any "Outside Sales Area" as defined in the Declarations and the area occupied by any kiosks or remote merchandising units situated in the Common Areas of the Shopping Center.

**Force Majeure.** Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inclement weather (including rain), inability to obtain labor or materials or reasonable substitutes therefor, failure or disruption of utilities or critical electronic systems (including so called "rolling" blackouts), governmental restrictions, governmental regulations, governmental controls (including delays in issuing required permits and approvals), judicial orders, acts of the public enemy (including terrorist acts) or hostile governmental action, civil commotion, fire or other casualty, eminent domain, war and other causes beyond the reasonable control of the party obligated to perform. For the purposes of this definition, "terrorist acts" mean any act by a Person or Persons, intending or actually causing harm, who are acting either independently or in any way connected, directly or indirectly, to organizations, whether or not recognized by any governmental authority, against the interest of the United States or directly or indirectly against either Lessor or Lessee, which acts occur in the Phoenix, Arizona metropolitan area or result in a substantial disruption in the operation of Sky Harbor Airport in Phoenix, Arizona.

**Foreclosure.** The exercise of remedies under a Mortgage and the enforcement of the rights of a beneficiary under a deed of trust and the exercise of the power of sale thereunder and the tender and acceptance of a warranty deed in lieu of foreclosure or forfeiture.

**Governmental Restrictions.** Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

**Gross Sales.** The gross selling, rental, or lease price of all merchandise or services sold, rented or leased in connection with the operation of Lessee's business, from the Pad by Lessee, its sub-lessees, licensees and concessionaires, including e-mail, mail, telephone, internet or computer based orders placed or filled in or from the Pad, whether for cash or on credit (each sale upon installments or credit shall be treated as a sale for the full cash price at the time of sale) and whether made by store personnel or by vending, gaming, or electronic kiosks or machines, excluding or deducting, as the case may be, only the following:

- (i) The selling price of all merchandise returned by customers and accepted for full credit or the amount of discounts and allowances made thereon, but only to the extent previously reported as a part of Gross Sales;
- (ii) Goods returned to sources, or transferred to another store or warehouse owned by or Affiliated with Lessee solely for the convenience of Lessee and not for the purpose reducing Gross Sales;
- (iii) Sums and credits received in the settlement of claims for loss of or damage to merchandise, but only to the extent previously reported as a part of Gross Sales;

(iv) The price allowed on all merchandise traded in by customers for credit or the amount of credit for discounts and allowances made in lieu of acceptance thereof, but only to the extent previously reported as a part of Gross Sales;

(v) Cash refunds made to customers in the ordinary course of business, but only to the extent previously reported as a part of Gross Sales, but this exclusion shall not include any amount paid or payable for what are commonly referred to as trading stamps; and

(vi) Sales taxes, so-called luxury taxes, consumers' excise taxes, gross receipts taxes and other similar taxes now or in the future imposed upon the sale of merchandise or services, but only if collected separately from the selling price of merchandise or services and collected from customers.

Each sale upon installments or credit shall be treated as a sale for the full cash price at the time of sale.

**Guarantor.** Not applicable.

**Hazardous Materials Laws.** Any and all federal, state or local laws, ordinances, rules, decrees, orders, regulations or court decisions (including the so-called "**common-law**") relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, environmental conditions on, under or about the Pad, or soil and ground water conditions, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**"), as amended, 42 U.S.C. §9601, et seq., the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("**RCRA**") and the Hazardous Waste Amendments of 1984, 42 U.S.C. §6901, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq. Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., Clean Air Act of 1966, as amended, 42 U.S.C. 7401 et seq., Toxic Substances Control Act of 1976, 15 U.S.C. 2601 et seq., Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001 et seq., National Environmental Policy Act of 1975, 42 U.S.C. 300(f) et seq., any amendments to the foregoing, and any similar federal, state or local Governmental Restrictions.

**Hazardous Materials.** Any chemical, compound, material, substance or other matter that: (i) is a flammable explosive, asbestos, radioactive material, nuclear medicine material, drug, vaccine, bacteria, virus, hazardous waste, toxic substance, petroleum product, or related injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; (ii) is controlled, designated in or governed by any Hazardous Materials Law; (iii) gives rise to any reporting, notice or publication requirements under any Hazardous Materials Law; or (iv) gives rise to any liability, responsibility or duty on the part of Lessee or Lessor with respect to any third Person under any Hazardous Materials Law.

**Impositions.** All real property taxes, possessory interest taxes, personal property taxes assessed against the buildings and improvements within the Shopping Center, excise taxes, government property lease excise taxes, payments in lieu of taxes, assessments (whether arising from any improvement or special taxing district, or otherwise), excluding, however, any improvement or special taxing district formed for the purpose of installing or paying for the installation of offsite improvements installed by or for the benefit of Lessor in connection with the initial construction of the Shopping Center (provided, however, all such assessments shall be converted to installments payable over the longest period available and only installments payable during the Lease Term shall be included in Impositions), excises, levies, license and permit fees, and all other charges of whatsoever kind and nature and whether any of the foregoing be general or special, ordinary or extraordinary, foreseen or unforeseen, which at any time during the Lease Term may be imposed upon the Demised Premises, including those imposed or required by governmental authorities having jurisdiction to increase tax increments to such governmental authorities and for services such as fire protection, street, sidewalk and road maintenance, refuse removal or other governmental services formerly provided without charge to property owners or occupants.

**Improvements.** All improvements and structures other than the Building now or at any time hereafter erected or situated upon the Demised Premises during the Lease Term, and any and all renewals, replacements, additions and substitutions thereto.

**Initial Lease Term.** The term commencing on the Rent Commencement Date and ending upon the expiration of twenty (20) years thereafter.

**Lease.** This agreement and all exhibits attached to this Lease (all of which are incorporated into this Lease), as the same may be amended from time to time.

**Lease Term.** Where no distinction is made, the Initial Lease Term and the Extended Lease Term(s).

**Losses and Liabilities.** All liabilities, claims, losses, causes of action, charges, penalties, damages, costs or expenses (including reasonable attorneys' fees and costs), of whatsoever character, nature and kind, whether to property or Person, whether by direct or derivative action, and whether known or unknown, suspected or unsuspected, or latent or patent.

**Minimum Rent.**

(a) Commencing on the Rent Commencement Date and continuing on the first day of each month thereafter through the fifth (5th) anniversary of the commencement of the Lease Term: \$9,583.33 per month.

(b) On the fifth (5<sup>th</sup>) anniversary of the Rental Commencement Date and on each subsequent fifth (5<sup>th</sup>) anniversary of the Rental Commencement Date, the Minimum Rent then payable under this Lease shall be increased (and not decreased) by a percentage equal to three (3) times the increase in the percentage by which the "CPI" for the third to the last month of the previous year of the Lease Term increased over the CPI for the "Base Period." For the purposes of this Lease, the "Base Period" shall mean the month which is sixty three (63) months prior to the current anniversary of the Rental Commencement Date. In no event shall the Minimum Rent increase by more than eleven percent (11%) of the Minimum Rent previously payable under this Lease. Minimum Rent shall continue to be payable in monthly installments at the rate previously payable under the Lease until Lessor notifies Lessee of the new Minimum Rent payable as a result of the adjustments described in this clause (b). Lessor shall, however, endeavor to so notify Lessee prior to the effective date of the new Minimum Rent. However, the failure by Lessor to timely notify Lessee of the new Minimum Rent shall not be deemed a waiver by Lessor of the increase in Minimum Rent; rather, the new monthly amount (or any portion not previously paid) shall be payable, retroactive to the applicable adjustment date, upon notification by Lessor to Lessee of the new Minimum Rent.

**Mortgage.** A mortgage on Lessor's interest in the Shopping Center which shall be deemed to include a deed of trust and such other types of security instruments as are commonly given to secure loans or advances on real property and the financing of improvements under the laws of the State of Arizona and the note or other credit instrument secured thereby.

**Mortgagee.** A mortgagee under a Mortgage which shall be deemed to include the beneficiary under a deed of trust and the parties secured by any other security instrument constituting a Mortgage.

**New Impositions.** Impositions arising as a result of the events more particularly described in §4.06.

**Offsite Costs.** The hard and soft costs of the Offsite Improvements.

**Offsite Improvements.** Right of way acquisition, street widening and other offsite road improvements, traffic signals, sidewalks, medians, crosswalks, parkway planters, landscaping, bicycle lanes, offsite water and drainage systems, offsite lighting, offsite underground electric, telephone, water, sewer, gas and other utility lines and other improvements adjacent or contiguous to the Shopping Center for the benefit of the Shopping Center, including the various offsite improvements depicted on the Site Plan.

**Onsite Costs.** The hard and soft costs of the Onsite Improvements.

**Onsite Improvements.** Onsite grading, access roads paving, curbs, directional signs and other governmentally required items, landscaping and lighting, parking areas, underground electric lines, telephone lines, water lines, sewer lines, gas lines and other utility lines, dust control and screen walls and other improvements to the real property on which the Shopping Center has been developed, including the various onsite improvements depicted on the Site Plan.

**Pad.** The aggregate of the Demised Premises and the Improvements and the Building thereon. ←

**Percentage Rent.**

(a) A sum equal to a percentage of Gross Sales generated from the conduct of Lessee's business upon the Demised Premises during each calendar year. From and after the calendar month in which Lessee's Gross Sales meet or exceed the Breakpoint, Lessee shall pay to Lessor, on or before the twentieth (20<sup>th</sup>) day of the following calendar month, an amount equal to the Gross Sales of Lessee for such month multiplied by four percent (4%).

(b) Intentionally Omitted.

(c) For the purposes of computing the Percentage Rent due during the first fractional calendar year of the Lease Term following the Rent Commencement Date, the Breakpoint shall be multiplied by a fraction, the numerator which is the number of calendar days during such fractional calendar year and the denominator of which is three hundred sixty five (365).

(d) Lessee shall furnish or cause to be furnished to Lessor, a monthly statement of Gross Sales and monthly state and local sales tax forms within twenty (20) days after the close of each calendar month, and an annual statement, including a monthly breakdown of Gross Sales, within thirty (30) days after the close of each calendar year. Each statement shall also show the amounts, if any, excluded from Gross Sales under the definition of Gross Sales. Each such statement shall be accompanied by a certification by an authorized officer of Lessee that such statement is true, correct and complete. Lessee shall record at the time of sale, in the presence of the customer, all receipts from sales or other transactions whether for cash or credit in a cash register or in cash registers which have a cumulative total and which shall number consecutive purchases or by issuing serially numbered sales slips or invoices. Failure by Lessee to report Gross Sales and supply Lessor with a copy of Lessee's monthly state and local sales tax forms, which failure is not cured within ten (10) days after written notice thereof by Lessor to Lessee, shall constitute an Event of Default. In addition to the remedies available to Lessor under Article 17, Lessee shall be assessed a service charge of Fifty and No/100 Dollars (\$50.00) for each violation under this section, payable when Minimum Rent is next due. Lessee shall keep at the Pad or at its general business office full, complete and accurate books of account and records and all such cash register receipts, sales slips and invoices with regard to Gross Sales, credits, refunds, other deductions or exclusions from Gross Sales and other pertinent transactions generated in connection with the operation of Lessee's business, generated from or upon the Pad (including the Gross Sales of any sublessee, licensee or concessionaire and including contracts, vouchers, checks and inventory records (including records relating to the delivery and transfer of merchandise to or from the Pad)) and such books, receipts and records shall be kept for a period of three (3) years after the close of each calendar year and shall be available for inspection and audit not more frequently than once each calendar year by Lessor, and its Representatives at the Pad or at Lessee's general business office at all times during regular business hours upon not less than five (5) days written notice by Lessor to Lessee. If, however, at the expiration of such three (3) year period, Lessor has requested an audit or if a controversy then exists between Lessor and Lessee with respect to the amount of Gross Sales or Percentage Rent, then Lessee shall maintain such records until such audit or controversy is finally terminated. In the event Lessee does not retain all such records as required pursuant to this section, any issues relating to such missing records shall be resolved adverse to Lessee. The receipt by Lessor of any statement or any payment of Percentage Rent for any period shall not bind Lessor as to the correctness of the statement or the payment. Lessor shall, within three (3) years after the receipt of any such statement, be entitled to an audit of Gross Sales either by Lessor or by a certified public accountant to be designated by Lessor not more frequently than once each calendar month. Such audit shall be limited to the determination of the "Gross Sales" as defined in this Lease and shall be conducted during normal business hours at the Pad or at Lessee's general business office. In connection with any such audit, Lessor or its authorized representatives shall have the right to inspect and copy the books and records to be maintained by Lessee pursuant to this section and Lessor and its authorized representatives shall have full and free access to such books and records and the right to require of Lessee, its agents and employees, such information or explanation with respect to such books and records as may be reasonably necessary in Lessor's judgment for a proper examination and evaluation thereof. If it is determined by Lessor that the actual Gross Sales for the period covered by any statement exceeds the amount shown in such statement, Lessor shall so notify Lessee following its determination. Upon receipt of such notice, Lessee may object to Lessor's determination by providing Lessor with written notice of such objection within fifteen (15) days following receipt by Lessee of Lessor's notice. Unless Lessee so objects, Lessee shall make payment of the entire deficiency in Percentage Rent based on Lessor's determination of Gross Sales within thirty (30) days following its receipt of Lessor's notice. If, however, Lessee does timely object, Lessor and Lessee shall appoint, by mutual agreement, a neutral independent certified public accountant who shall promptly make a written determination of the Gross Sales for the period in question and shall provide such determination to Lessor and Lessee. The neutral independent certified public accountant's determination shall be binding on Lessor and Lessee for all purposes. If the neutral independent certified public accountant (or, if Lessee does not timely object, Lessor) determines that the actual Gross Sales for the period in question exceed the amount shown in the statement for such period furnished by Lessee by more than three percent (3%), then Lessee shall pay to Lessor (i) all reasonable costs and expenses incurred by Lessor in determining and collecting the understatement or underpayment of Percentage Rent not to exceed, however, One Thousand and No/100 Dollars (\$1,000.00), which amount shall be adjusted annually by the percentage equal to the percentage increase in the CPI, as well as (ii) the fees and costs owed to the neutral independent certified public accountant for its services otherwise such costs shall be paid by Lessor. Any sums determined by the neutral independent certified public account to be due from either party from the other shall be paid

within thirty (30) days following such party's receipt of the written determination from the neutral independent certified public accountant. Any information gained from such statements or inspection shall be confidential and shall not be disclosed other than to carry out the purposes of this Lease, provided, however, Lessor shall be permitted to divulge the contents of any such statement in connection with any financing arrangements, sales or assignments of Lessor's interest in the Pad to the Town pursuant to the Development Agreement or in connection with any administrative or judicial proceedings in which Lessor is involved where Lessor may be required to divulge such information. In addition, Lessee consents to the Arizona Department of Revenue providing transaction privilege tax revenue information with respect to the Demised Premises to the Town.

**Person.** An individual, corporation, partnership, joint venture, association, firm, joint stock company, trust, unincorporated association, limited liability company, or other entity.

**Prime Rate.** That rate announced publicly from time to time by Bank of America, NA, or its successor at its main Charlotte, North Carolina office as its "prime rate".

**Removable Personal Property.** All personal property, of every kind and nature, belonging to Lessee, excluding, however, property which normally would be attached or affixed to the Building, the Improvements or the Demised Premises in such a manner that such property would become a part of the realty, regardless of whether such property is in fact so placed in or on or affixed to the Building, the Improvements or Demised Premises.

**Rent Commencement Date.** The earlier to occur of (i) three hundred thirty (333) days following the expiration of the Feasibility Period (as defined in §31.19 below), or (ii) the date Lessee commences to conduct business operations within the Pad.

**Representatives.** The officers, directors, council members, shareholders, partners, Affiliates, board members, staff, committee members, planning and other commissioners, officials, employees, members, agents, principals, independent contractors, attorneys, accountants and representatives of the referenced Person and the predecessors, heirs, successors and assigns of any such Person.

**Shopping Center.** The retail shopping center now or to be located at the northwest corner of Power Road and Ray Road, Town of Gilbert, Maricopa County, Arizona, known or to be known as Gilbert Gateway Towne Center Phase I and more particularly described on the Site Plan attached hereto as Exhibit "B".

**Town.** The Town of Gilbert, Arizona, an Arizona municipal corporation.

**Transfer/Transferee/Transferor.** Any conveyance, transfer, sale, assignment, lease, sublease, license, concession, franchise, gift, hypothecation, mortgage, pledge, encumbrance, or the like, to any Person (a "Transferee") or from a Person (a "Transferor"), directly or indirectly, whether by operation of law or otherwise.

## ARTICLE 2

### DEMISED PREMISES-TERM OF LEASE - OPTION

§2.01. Lessor, in consideration of the rents, covenants and agreements hereinafter reserved on the part of Lessee to be performed leases to Lessee, and Lessee leases and accepts from Lessor the Demised Premises for the Initial Lease Term, unless this Lease shall sooner terminate as hereinafter provided, or be extended as hereinafter provided.

§2.02. (a) Lessee shall have the option to extend the Initial Lease Term for two (2) Extended Lease Terms of five (5) years each, with such Extended Lease Terms to begin upon the expiration of the Initial Lease Term (or the prior Extended Lease Term, as the case may be) and the same terms and conditions as herein set forth shall apply to such Extended Lease Term, and the Minimum Rent shall be as set forth in Article 1, but there shall be no further option to extend the Lease Term after the expiration of the second (2<sup>nd</sup>) Extended Lease Term. If Lessee wishes to exercise an option to extend the Lease Term, it shall do so by giving written notice to Lessor not less than nine (9) months, nor more than eighteen (18) months, prior to the expiration of the Initial Lease Term (or the prior Extended Lease Term, as the case may be).

(b) Notwithstanding the foregoing, Lessee may exercise any such option only if, at the time of notice of exercise of such option and as of the date of the commencement of the Extended Lease Term (i) Lessee is then conducting business operations on the Demised Premises, and (ii) there is not then in existence an Event of Default, and (iii) no event shall have occurred or state of facts exist

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which if continued uncured will, with the lapse of time or the delivery of notice, or both, constitute an Event of Default, and (iv) no previous option has remained unexercised by Lessee.

### ARTICLE 3

#### RENT

§3.01. Lessee covenants and agrees to pay to Lessor during the entire Lease Term, Minimum Rent and Percentage Rent at the times, in the amounts and as provided in Article 1 and all other charges and amounts at the time provided for herein. The Minimum Rent, Percentage Rent and other charges shall be paid to Lessor by Lessee without notice or demand, except as set forth in this Lease, and without abatement, deduction or set-off.

§3.02. It is the purpose and intent of Lessor and Lessee that the Minimum Rent and Percentage Rent shall be absolutely net to Lessor, so that this Lease shall yield, net to Lessor, the Minimum Rent and Percentage Rent specified herein and that all costs, operating expenses, Impositions, premiums, fees, interest, charges, expenses, reimbursements and obligations of every kind and nature whatsoever relating to the Pad, excepting only certain taxes of Lessor as provided in §4.02, which may arise or become due during or out of the term of this Lease, shall be paid or discharged by the Lessee.

§3.03. Lessee shall pay, as additional rent, all sums of money required to be paid pursuant to the terms of this Lease in addition to Minimum Rent, Percentage Rent, Common Area Expenses and Impositions, whether or not the same are designated "additional rent". If such amounts or charges are not paid at the time provided in this Lease, such amounts or charges shall nevertheless be collectable as additional rent with the next installment of Minimum Rent falling due, but this shall not be deemed to suspend or delay the payment of any amount of money or charge at the time the same becomes due and payable or limit any remedy available to Lessor on account of late payments by Lessee. If Lessee pays any installment of Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent or other charges under this Lease by check and such check is returned for insufficient funds or other reasons not the fault of Lessor, then Lessee shall pay to Lessor, pursuant to applicable Arizona statutes, a service charge in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00), or an amount equal to five percent (5%) of the face amount of such check, whichever is greater, as well as bank fees incurred by Lessor. Such payment shall be made within five (5) days after written notice by Lessor to Lessee that such check has not been honored.

### ARTICLE 4

#### PAYMENT OF TAXES, ASSESSMENTS, AND CARRYING CHARGES

§4.01 From and after the Rent Commencement Date, Lessee shall pay or cause to be paid (except as provided in §4.02), before any fine, penalty, interest or cost may be added thereto, all Impositions levied and assessed against the Pad, provided, however, that:

(a) if, by law, any Imposition may, at the option of the Lessee, be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Lessee may exercise the option to pay the same, including any accrued interest on the unpaid balance of such Imposition, in installments and, in such event, shall pay only such installments as may become due during the Lease Term as the same respectively become due and before any fine, penalty, further interest or cost may be added thereto; and

(b) any Imposition, except Impositions which have been converted into installment payments by Lessee, as referred to in §4.01(a), relating to a fiscal period of the taxing authority, a part of which period is included within the Lease Term and a part of which is included in a period of time after the expiration of the Lease Term, shall, whether or not such Imposition shall be assessed or become a lien upon the Demised Premises or the Building or the Improvements, or shall become payable, during the Lease Term, be adjusted between Lessor and Lessee as of the expiration of the Lease Term, so that Lessee shall pay that portion of such Imposition which that part of such fiscal period included in the period of time before the expiration of the Lease Term bears to such fiscal period, and Lessor shall pay the remainder thereof.

Within thirty (30) business days after Lessor's request therefore, which request may only be made by Lessor with respect to Impositions paid directly by Lessee to a taxing authority, Lessee shall furnish to Lessor written evidence, duly certified, that any and all taxes and Impositions required to be paid by Lessee hereunder have been paid, satisfied or otherwise discharged.

§4.02. Nothing herein contained shall require Lessee to pay any municipal, state or federal net income, gift, estate, inheritance or excess profits taxes assessed against Lessor.

§4.03. Intentionally Omitted.

§4.04. Lessor and Lessee shall each furnish the other with whatever information, documents or records that may be required and otherwise cooperate so as to permit the Demised Premises to be assigned a separate tax roll number for any taxing authority having jurisdiction to assess and collect Impositions. Should the Demised Premises be separately assessed, Lessee shall pay such separately assessed Imposition(s) according to this Article 4 and Lessor and Lessee shall file with the Maricopa County Assessor such documentation and information as may be necessary to cause the billings for Impositions to be forwarded directly to Lessee.

§4.05. Intentionally Omitted.

§4.06. If at any time during the Lease Term, any authority having the power to tax including, without limitation, the Town, any federal, state, county or municipal government or any political subdivision thereof (hereinafter collectively referred to as "taxing authority" for purposes of this paragraph only), shall alter the methods and/or standards of taxation and assessment (hereinafter referred to as the "tax plan" for purposes of this paragraph only), against the legal or equitable interests of Lessor or any Mortgagee in the Demised Premises, the Building and/or the Improvements in whole or in part, so as to impose a tax plan in lieu of or in addition to the tax plan in existence as of the date of this Lease, such taxes or assessments based upon such other tax plan, including without limitation (i) a tax, assessment, surcharge, fee, levy, penalty, bond or similar imposition (hereinafter collectively referred to as "New Impositions" for purposes of this paragraph only), on Lessor's right to rental or other income from the Demised Premises or as against Lessor's business of leasing the Demised Premises, (ii) any New Impositions in substitution or in lieu of, partially or totally, any Impositions assessed upon real property prior to any such alteration in the tax plan, (iii) any New Impositions allocable to or measured by the area of the Demised Premises or the rental payable hereunder, including without limitation any New Impositions levied by any taxing authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Lessee of the Demised Premises or any portion thereof, or (iv) any New Impositions upon this Lease transaction or any document to which Lessee is a party which creates or transfers any interest or estate in or to the Demised Premises, then Lessee shall pay to Lessor, in addition to and along with the rental otherwise payable hereunder, a sum equal to the aggregate of any taxing authority's sales, use or privilege taxes legally levied or imposed, or hereafter legally levied or imposed, during the Lease Term against or on account of the amounts payable hereunder, or the receipts thereof by Lessor (except state, federal or any other net income taxes, gift taxes, inheritance taxes and estate taxes imposed or levied against Lessor), which shall be paid monthly with the installments of Minimum Rent as provided in this Lease. Any special, unforeseen or extraordinary New Impositions however described, shall be considered as "Impositions" for the purposes of this Lease, excluding, however, from such Impositions all net income taxes, gift taxes, inheritance taxes and estate taxes of Lessor.

§4.07. If the Demised Premises is separately assessed, Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Impositions, subject to the following:

(a) If by the terms of any such Impositions, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the inurrence of any lien, charge, liability or penalty of any kind against the Demised Premises, the Building or the Improvements or Lessee's leasehold interest therein and without subjecting Lessor to any liability, civil or criminal, for failure so to comply therewith, Lessee may delay compliance therewith until the final determination of such proceeding.

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Lessee nevertheless, on the prior written consent of Lessor (such consent not to be unreasonably withheld), may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Lessor to criminal liability and Lessee (i) furnishes to Lessor security, reasonably satisfactory to Lessor against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence and in good faith.

(c) Lessor shall, at Lessee's sole cost and expense, including reasonable attorneys' fees, execute and deliver any appropriate papers which may be necessary or proper to permit Lessee to contest the validity or application of any such Impositions. Lessee shall indemnify Lessor from any loss, cost or expense arising from such proceedings

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§4.08. In addition to Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent and any other charges due from Lessee under this Lease, Lessee shall pay to Lessor, together with the installments of Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent and other charges due under this Lease, as the case may be, an amount equal to any state, county or municipal sales, rental, occupancy or use taxes assessed or levied upon Lessor with respect to the amounts paid by Lessee to Lessor hereunder, as well as all taxes assessed or imposed upon Lessor's gross receipts or gross income from leasing the Demised Premises to Lessee, including, without limitation, transaction privilege taxes, education taxes, any tax now or hereafter imposed by the State of Arizona, any other governmental body with jurisdiction and any taxes assessed or imposed in lieu of or in substitution of any of the foregoing taxes. Such taxes shall not, however, include any franchise, gift, estate, inheritance, conveyance, transfer or net income tax assessed against Lessor.

## ARTICLE 5

### SURRENDER

§5.01. Lessee covenants and agrees to not hold over without the express written consent of Lessor and shall on the last day of the Lease Term or upon any earlier termination of this Lease, surrender and deliver up the Pad to the Lessor and, subject to the provisions of §14.03(b), in good order, condition and repair, reasonable wear and tear excepted and Lessee shall deliver to Lessor all keys to the Building.

§5.02. Subject to the rights of the Leasehold Mortgagee (as defined in §32.01), any property of Lessee, including Removable Personal Property and trade fixtures, which shall remain on the Demised Premises, or in the Building, after the termination or expiration of this Lease and the removal of Lessee from the Demised Premises and the Building may, at the option of Lessor, be deemed to have been abandoned by Lessee and either may be retained by Lessor as its property or be disposed of in such manner as Lessor may see fit.

§5.03. Intentionally Omitted.

§5.04. If requested to do so by Lessor, Lessee shall, upon the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Lessor such instruments of further assurance, as in the opinion of Lessor are necessary or desirable to confirm or perfect the right, title and interest of the Lessor in and to the Pad and any other property surrendered to Lessor pursuant to this Lease, free and clear of any claim by Lessee.

§5.05. Within thirty (30) days after the expiration or earlier termination of this Lease, but only if the Demised Premises has been used for a purpose other than the operation of a restaurant, Lessee shall obtain, at its sole cost and expense, and shall deliver to Lessor, an environmental assessment, prepared by a Person reasonably acceptable to Lessor, indicating whether there exists at the Demised Premises any condition that would constitute a violation of any applicable Hazardous Materials Laws and representing to Lessor that no Hazardous Materials are present, in, on, or under the Demised Premises and that no impairment to the environment exists as a result of the development and operation of the Demised Premises by Lessee, any Transferee, or their respective agents, servants, contractors or employees. Lessee covenants and agrees that it shall be liable for and shall indemnify, defend and hold Lessor harmless for, from and against any and all Losses and Liabilities which may in any manner be asserted against or incurred by Lessor as a result of or arising out of the use by Lessee, any Transferee, or their respective agents, servants, contractors or employees of Hazardous Materials in the Demised Premises. If the environmental assessment discloses the presence of Hazardous Materials and/or any violations of Hazardous Materials Laws, Lessee shall, immediately following receipt of the environmental assessment commence and thereafter diligently pursue to completion the necessary Remedial Work (as defined in §9.05) and shall furnish, at its sole cost and expense, a later dated environmental assessment representing and warranting to Lessor that the previously disclosed Hazardous Materials have been remediated and/or previously disclosed violations of applicable Hazardous Materials Laws have been cured in accordance with applicable Governmental Restrictions.

## ARTICLE 6

### INSURANCE

§6.01. Lessee, at its sole cost and expense, shall, during the entire Lease Term, keep the Building insured against loss or damage by fire and against loss or damage by such other risks now or hereafter embraced by "Causes of Loss-Special Form", utilizing a form of policy providing coverage at least as broad as ISO policy form CF 10 30, including earthquake damage coverage, together with insurance against sprinkler damage, vandalism and malicious mischief, as well as the following endorsements: boiler and machinery, business income and extra expense (with extended period of

indemnity), service interruption and building ordinance or law and against such other risks or hazards and in such amounts as the Lessor shall reasonably require. Such insurance shall be maintained by Lessee during the Lease Term for a sum not less than one hundred percent (100%) of the full replacement value of the Building and the Improvements erected upon the Demised Premises. The policy required pursuant to the provisions of this §6.01 shall not have a deductible in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

§6.02. In addition to the insurance required in §6.01, Lessee, at its sole cost and expense, shall purchase and maintain from and after the Effective Date:

(a) Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00), per occurrence and annual aggregate, insuring against any and all liability of the insured with respect to the Demised Premises, or arising out of the maintenance, use or occupancy thereof, including premises operations, products and completed operations providing coverage at least as broad as ISO policy form CG 0001. The commercial general liability insurance policy shall contain a contractual liability endorsement specifically deleting the contractual liability exclusion for Personal Injury. At least One Million and No/100 Dollars (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Four Million and No/100 Dollars (\$4,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. Such amounts shall be increased, not more frequently than once every five (5) years, to levels customary in other shopping centers in the vicinity of the Shopping Center upon the reasonable request of Lessor. In addition, the policy required pursuant to the provisions of this §6.02(a) shall not have a deductible in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

(b) Business Auto Coverage for owned, hired and non-owned vehicles with a combined single limit of not less than Three Million and No/100 Dollars (\$3,000,000.00), per occurrence, Three Million and No/100 Dollars (\$3,000,000.00) annual aggregate. At least One Million and No/100 Dollars (\$1,000,000.00) of such coverage shall be primary coverage and the remaining Two Million and No/100 Dollars (\$2,000,000.00) of such coverage may be pursuant to an umbrella or excess liability policy. In addition, the policy required pursuant to the provisions of this §6.02(b) shall not have a deductible in excess of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00).

(c) Boiler and machinery insurance on all boilers, pressure vessels, gas-fired equipment, air conditioning equipment and systems serving the Demised Premises. If not covered by the insurance described in §6.01, then the insurance specified in this §6.02(c) shall be in an amount not less than one hundred percent (100%) of full replacement cost of the Building and Improvements on the Demised Premises and Lessee's Removable Personal Property.

(d) A policy or policies of business income/business interruption insurance and extra expense coverage (collectively, "Business Income Insurance") with coverage that will reimburse Lessee for a period of twelve (12) months for all direct and indirect loss of income and changes and costs incurred arising out of all named perils insured against by Lessee's policies of property insurance, including prevention of, or denial of use of or access to, all or part of the Demised Premises or Shopping Center as a result of those named perils. The Business Income Insurance coverage must provide coverage for the loss of income, charges and costs contemplated under this Lease during the period of restoration of the Building and Improvements on the Demised Premises pursuant to Article 14, not to exceed, however, twelve (12) months.

(e) If the Permitted Use (as defined in Article 12) of the Pad includes the sale of alcoholic beverages, the policy of commercial general liability insurance required pursuant to §6.02(a) shall include coverage for employer's liability, host liquor liability and liquor liability coverage with a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00), per occurrence. At least One Million and No/100 (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Four Million and No/100 Dollars (\$4,000,000.00) of such coverage may be pursuant to an umbrella excess liability policy.

(f) A policy or policies of workers' compensation insurance with an insurance carrier and in amounts required by applicable Governmental Restrictions and a policy of employer's liability insurance with limits of liability not less than One Million and No/100 Dollars (\$1,000,000.00) each accident; One Million and No/100 Dollars (\$1,000,000.00), disease policy limit; and One Million and No/100 Dollars (\$1,000,000.00), disease each employee. Both such policies shall contain waivers of subrogation in favor of Lessor. If, in accordance with the provisions of §6.02(a) and/or §6.02(e) above, Lessee maintains a policy of umbrella or excess liability insurance, such policy must also provide excess or umbrella liability coverage for Lessee's policy of employer's liability insurance.

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(g) Intentionally Omitted.

§6.03. All policies of insurance to be procured by Lessee shall be issued by insurance companies holding a "general policy holders rating" of not less than A-/VIII in the most current available "Best's Key Rating Guide", qualified to do business in the State where the Shopping Center is situated. All property policies shall be issued in the name of Lessee, and shall name Lessor as a "co-loss payee as interests may appear". All liability policies obtained by Lessee shall name Lessor, Mortgagee and Lessor's management agent as additional insureds. In addition, Lessee's liability insurance policies shall be endorsed as needed to provide cross-liability coverage for Lessee, Lessor, Lessor's management agent and any Mortgagee and shall provide for severability of interests. Evidence of insurance meeting the requirements of Acord Form No. 27 or Acord Form No. 28 or their equivalent or such other evidence as may be reasonably acceptable to Lessor and Mortgagee and evidence of required additional insured endorsements on ISO Form CG 20-26 or its equivalent (collectively referred to in this Article 6 as "Certificates") shall be delivered to Lessor within ten (10) days after delivery of the Pad by Lessor to Lessee and thereafter, executed copies of renewal policies or Certificates thereof shall be delivered to Lessor within thirty (30) days prior to the expiration of the term of each such policy. By its execution of this Lease, Lessor acknowledges that a manuscript certificate of insurance in the form attached to this Lease as Exhibit "L" shall satisfy the requirements of this §6.03. In addition, as an alternative to a certificate for liability insurance, Lessee may submit a certified copy of the policy of liability insurance. All commercial general liability insurance policies shall contain a provision that Lessor, Lessor's management agent and the Mortgagee although named as additional insureds, shall nevertheless be entitled to recovery under the policy for any loss occasioned to Lessor and its Representatives by reason of the negligence of Lessee. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Lessee in like manner and to like extent. All policies of insurance delivered to Lessor must contain a provision that the company writing the policy will give Lessor twenty (20) days notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All commercial general liability, property damage and other casualty policies shall be written as primary policies and shall provide that any insurance which Lessor or Mortgagee may carry is strictly excess, secondary and non-contributing with any insurance carried by Lessee. The insurance requirements contained in this Article 6 are independent of Lessee's waiver, indemnification and other obligations under this Lease and shall not be construed or interpreted in any way to restrict, limit or modify Lessee's waiver, indemnification or other obligations or to in any way limit Lessee's obligations under this Lease.

§6.04. The proceeds of any property insurance required to be maintained by Lessee pursuant to the provisions of this §6.01 shall be payable jointly to Lessee and Lessor and shall be used to restore the Demised Premises, the Building and Improvements to their original condition.

§6.05. If, notwithstanding the provisions of §6.03, any insurance which Lessee is required to obtain and maintain is canceled, Lessee shall, before such cancellation is effective (or, if such cancellation is effective upon receipt of notice, within ten (10) business days after the date such notice is received), replace such insurance with other insurance providing essentially the same or better coverages and essentially the same or greater coverage amounts. Lessee shall promptly deliver to Lessor evidence of such replacement insurance.

§6.06. If Lessee fails to obtain the replacement insurance as required by §6.05, Lessor may (but shall not be required to) procure such replacement insurance on Lessee's behalf and charge Lessee the premiums for such insurance, together with a ten percent (10%) handling charge, as well as interest on the amounts expended by Lessor at the Default Rate, payable upon demand.

§6.07. Lessee's obligations to carry the insurance required by this Article 6 may be brought within the coverage of a so-called blanket policy or policies of insurance carried and maintained by Lessee; provided, however, that the coverage afforded Lessor shall not be reduced or diminished by reason of the use of a blanket policy of insurance, and provided further that the requirements set forth in this Article 6 are otherwise satisfied. If Lessee uses such a blanket policy, Lessee shall deliver to Lessor satisfactory evidence that the Pad has been properly added to the blanket policy and evidence that the insurance company that issued the blanket policy has allocated to the Pad the type of insurance coverage in the amounts required by this Article 6, with the limitations of liability required by this Lease.

§6.08. Lessor makes no representation or warranty to Lessee that the amount of insurance to be carried by Lessee under the terms of this Lease is adequate to fully protect Lessee's interests. If Lessee believes that the amount of any such insurance is insufficient, Lessee is encouraged to obtain, at its sole cost and expense, such additional insurance as Lessee may deem desirable or adequate. Lessee acknowledges that Lessor shall not, by the fact of approving, disapproving, waiving, accepting, or obtaining any insurance, incur any liability for or with respect to the amount of insurance carried, the form or legal sufficiency of such insurance, the solvency of any insurance companies or the payment or defense of any lawsuit in connection with such insurance coverage, and Lessee hereby expressly assumes full responsibility therefor and all liability, if any, with respect thereto.

§6.09. Lessor shall maintain, as a component of Common Area Expenses, commercial general liability insurance with a combined single limit of not less than Five Million and No/100 Dollars (\$5,000,000.00), per occurrence, insuring against any and all liability of Lessor with respect to the operation and use of the Shopping Center, and if Lessor so elects, fidelity and owned or rented automobile coverage. At least One Million and No/100 (\$1,000,000.00) of such insurance coverage shall be primary coverage and the remaining Four Million and No/100 Dollars (\$4,000,000.00) of such coverage may be pursuant to an umbrella excess liability policy. Lessor's obligation to carry the insurance required in this §6.09 may be brought within the coverage of any so-called blanket policy or policy of insurance carried and maintained by Lessor, provided that the coverage afforded will not be reduced or diminished by reason of the use of such blanket policy of insurance. Lessee shall pay Lessor, commencing on the Rent Commencement Date and for the balance of the Lease Term, on the first day of each calendar month thereafter, together with its payments of Minimum Rent, as a component of Common Area Expenses, one twelfth (1/12) of the estimated cost to Lessor of the insurance required to be maintained by Lessor under this Section for each year or partial year, subject to annual reconciliation in the manner set forth in §28.04 below. The payment for any partial year of the Lease Term shall be pro rated on the basis that the number of days in the Lease Term for such partial year bears to three hundred sixty (360). In the event the cost to Lessor of the insurance Lessor is required to maintain under this Section is not separately charged to Lessor by Lessor's insurance carrier, the portion applicable to the Demised Premises for the cost of such insurance shall be that proportion of such cost which the land area of the Demised Premises bears to the land area of the portions of the Shopping Center which are covered by such insurance..

#### ARTICLE 7

##### LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS

§7.01. If Lessee shall at any time fail to pay any sum, Imposition, cost or expense other than the Minimum Rent or Percentage Rent which it is obligated to pay under the terms of this Lease, then Lessor, after fifteen (15) days' written notice to Lessee (or upon such shorter notice as may be reasonable in case of an emergency), and without waiving or releasing Lessee from any obligation under this Lease and without being considered an election of remedies, may, but shall be under no obligation to pay any such sum, Imposition, cost or expense; provided, however, that no such payment shall be made if Lessee has in fact paid the same before the expiration of the time period and has given notice thereof to Lessor.

§7.02. If Lessee shall at any time fail to perform or observe any covenant or condition contained in this Lease, the performance of which involves something more than merely the payment of money, then Lessor, after thirty (30) days' written notice to Lessee (or upon such shorter notice as may be reasonable in case of an emergency), and without waiving or releasing Lessee from any obligation and without being considered an election of remedies, may perform the same for the account of Lessee and charge Lessee the actual cost of any such performance; provided, however, that if Lessee has in fact performed its obligation before the expiration of the notice period, or in the case of performance which by its nature cannot be completed within the notice period, has begun diligent performance of the same and is continuing such performance in a diligent fashion, and has given Lessor notice of such performance, then in such event, Lessor shall not commence such performance on its own part.

§7.03. All sums so paid or expended by Lessor and all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the performance of any such act, together with an administrative fee in an amount equal to ten percent (10%) of the sums paid or expended and the costs so incurred, as well as interest thereon at the Default Rate from the respective dates of Lessor's making of each such payment or incurring of each such cost and expense, including reasonable attorneys' fees, shall be paid by Lessee to Lessor on demand.

#### ARTICLE 8

##### REPAIRS, MAINTENANCE AND ALTERATIONS OF THE DEMISED PREMISES

§8.01. Throughout the entire Lease Term, subject to Article 14, Lessee, at its sole cost and expense, shall take good care of the Building and the Improvements and shall keep the same in good order and repair and in a neat, sanitary and attractive condition, and make all necessary repairs and replacements thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary or radical, foreseen and unforeseen with due diligence and in good faith. Also throughout the entire Lease Term, subject to Article 14, Lessee shall not abandon any portion of the Demised Premises, the Building or the Improvements or leave the Demised Premises, the Building or the Improvements unguarded or unprotected, and shall not otherwise act or fail to act in such a way as to unreasonably increase the risk of any damage to the Demised Premises, the Building or the Improvements. When used in this Article 8, the term "repairs" shall include all necessary replacements, renewals and alterations.

§8.02. The necessity for and adequacy of repairs to the Building and the Improvements and the furnishings and equipment therein pursuant to §8.01 shall be measured by the standard which is appropriate for buildings of similar construction and class within the Shopping Center, provided that Lessee shall in any event make all repairs necessary to avoid any structural damage or injury to the Building.

§8.03. Lessee shall put, keep and maintain the Building and the Improvements and the sidewalks, curbs and entrances, passageways located within the Lessee Maintenance Area (as identified on the Site Plan and as hereinafter defined) in a first class condition, comparable to other portions of the Shopping Center, clean and orderly, free of dirt, vermin, rubbish and unlawful obstructions. For the purposes of this §8.03, Lessee's Maintenance Area is identified as such on the Site Plan and is that portion of the Demised Premises located "back of curb". Lessee acknowledges that mold spores are present essentially everywhere and that mold can grow in any moist location. Emphasis is properly placed on prevention of moisture and on good housekeeping and ventilation practices. Lessee acknowledges the necessity of housekeeping, ventilation, and moisture control (especially in kitchens, janitor's closets, bathrooms, break rooms and around outside walls) for mold prevention. Lessee waives, releases and discharges Lessor and Lessor's property manager for, from and against all Losses and Liabilities for Personal Injury, Bodily Injury or Property Damage in any way arising from or relating to or associated with moisture or the growth of or occurrence of mold or mildew on the Building.

§8.04. Except as otherwise provided in the Declarations or in §26.01 of this Lease, Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Pad and Lessee hereby assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Pad. In the event Lessor fails or neglects to make repairs to the Demised Premises which Lessor is expressly required to make in accordance with the provisions of this Lease within thirty (30) days after written notice from Lessee of the necessity for such repairs (or within twenty four (24) hours in the event of an emergency), Lessee may, but shall not be obligated to, make such repairs to the Demised Premises and Lessor shall reimburse Lessee for the reasonable out of pocket costs incurred by Lessee within thirty (30) days after receipt of a bill from Lessee, together with copies of applicable invoices. In the event Lessor fails to reimburse Lessee within such thirty (30) day period, which failure continues for ten (10) days after written notice thereof by Lessee to Lessor, Lessee may deduct the costs incurred by it, together with interest thereon at the Default Rate, from payments of Common Area Expenses, Impositions and additional rent. In the event such repairs cannot reasonably be completed within thirty (30) days after receipt of written notice from Lessee of the necessity of such repairs and Lessor commences the making of such repairs within such thirty (30) day period and thereafter pursues the completion of such repairs with reasonable diligence, Lessor shall have such additional time as is reasonably necessary to complete the same before Lessee has the right to exercise the remedies available under this §8.04 or elsewhere in this Lease. In exercising the rights granted to it in this §8.04, Lessee shall not disturb the quiet enjoyment of other tenants or occupants of the Shopping Center and shall repair any damage caused to any portion of the Shopping Center as a result of the exercise by Lessee of the rights granted in this §8.04.

§8.05. Notwithstanding anything contained in this Lease to the contrary, except for the initial construction of the Building and the Improvements, Lessee shall not perform any exterior construction, exterior repairs, exterior replacements or exterior maintenance to any portion of the Pad during the months of October, November and December other than emergency repairs to the Pad and exterior repairs or replacements which if not made would cause Lessee to be in breach or default of the provisions of this Lease or of the Declarations.

§8.06. Following completion of construction of the Building and the Improvements on the Demised Premises, Lessee shall not cause a "Major Change" (as hereinafter defined) to the Building and/or the Improvements unless Lessee first secures the written approval of Lessor to such Major Change. For the purposes of this Article 8, a "Major Change" shall include the demolition, removal, alteration, modifying, replacement or addition to the Building and/or Improvements during the Lease Term (collectively, "Changes"), excepting therefrom (a) Changes to the Building or Improvements that involve only nonstructural, interior alterations, not visible from the exterior of the Building, or (b) exterior maintenance and repairs (i) which do not alter or change the originally prescribed elevations, appearance, landscaping or exterior construction materials of the Building and Improvements, and (ii) roof repairs or replacements the cost of which does not exceed Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) (the Changes described in subparagraphs (a) and (b) are collectively referred to as "Minor Changes"); provided, however, that any Minor Changes effectuated by Lessee pursuant to this Article 8 shall comply with all Governmental Restrictions. Lessor shall approve or disapprove any proposed Major Change to the Building and Improvements submitted to Lessor by Lessee within thirty (30) days after submission.

§8.07. Any approved Major Change shall, if commenced, be completed in accordance with all of the requirements contained in §§26.04, 26.05, 26.08, 26.09, 26.10, 26.11, 26.12 and 26.13 and any such

Major Change shall be commenced and completed in accordance with the plans and specifications approved therefor, and, subject to Force Majeure, without substantial interruption.

§8.08. All work required in connection with any Major Change to the Building and Improvements, including any site preparation, landscaping or utility installation, as well as actual construction work shall be performed by competent and financially responsible contractors, duly licensed as such under the laws of the State of Arizona, and shall be performed pursuant to written contracts with such contractors.

§8.09. For all Major Changes to be performed on the Demised Premises, Lessee's construction contract shall obligate a reputable and financially responsible contractor, who is fully bondable and licensed in the State of Arizona, and who has experience in completing the type of improvements contemplated by the Major Change to commence and complete the Major Change.

§8.10. Intentionally Omitted.

## ARTICLE 9

### COMPLIANCE WITH LAWS, ORDINANCES AND REGULATIONS

§9.01. Throughout the entire Lease Term, Lessee, at its sole cost and expense, shall promptly comply with all present and future Governmental Restrictions, any requirements of Lessee's insurers, or any other body exercising functions similar to those of any of the foregoing, which may be allocable to the Demised Premises, the Building or the Improvements, or any part thereof, or the sidewalks, curbs, passageways, alleys, entrances, coverings or rooflike structures placed upon or extending over any sidewalk, or any space adjacent thereto and located in the Lessee Maintenance Area, or to the use or manner of use of the Demised Premises, the Building or the Improvements, or any part thereof, or the owners, lessees or occupants thereof.

§9.02. Lessee shall likewise observe and comply with, or shall cause to be observed and complied with, all of the requirements of the commercial general liability insurance, the "Causes of Loss-Special Form" so called property insurance, and any other insurance policies at any time in force with respect to the Demised Premises, the Building and Improvements.

§9.03. Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Governmental Restrictions, subject to the following:

(a) If by the terms of any such Governmental Restrictions, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of any lien, charge, liability or penalty of any kind against the Demised Premises, the Building or the Improvements or Lessee's leasehold interest therein and without subjecting Lessor to any liability, civil or criminal, for failure so to comply therewith, Lessee may delay compliance therewith until the final determination of such proceeding

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Lessee nevertheless, on the prior written consent of Lessor (such consent not to be unreasonably withheld), may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Lessor to criminal liability and Lessee (i) furnishes to Lessor security (such as a surety bond or letter of credit), reasonably satisfactory to Lessor against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence and in good faith.

(c) Lessor shall, at Lessee's sole cost and expense, including reasonable attorneys' fees, execute and deliver any appropriate papers which may be necessary or proper to permit Lessee to contest the validity or application of any such Governmental Restrictions. Lessee shall indemnify Lessor from any loss, cost or expense arising from such proceedings.

(d) Lessee covenants and agrees that notwithstanding the foregoing, it will take no action which would or might subject Lessor to a penalty, late charge, default or forfeiture in connection with compliance with Governmental Restrictions. Lessee further covenants and agrees that it will not refrain from taking any action necessary to protect Lessor from a penalty, late charge, default or forfeiture in connection with compliance with Governmental Restrictions.

§9.04. Except for normal household, restaurant and janitorial cleaning and pesticide materials used, stored and disposed of in strict accordance with their directions and applicable hazardous materials

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laws, Lessee shall not allow any Hazardous Materials to be used, generated, released, stored or disposed of on, under or about, or transported from, the Pad, unless: (i) such use is specifically disclosed to and approved by Lessor in writing prior to such use; and (ii) such use is conducted in compliance with the provisions of this Article 9. Lessor may approve such use subject to reasonable conditions to protect the Pad and Lessor's interests. Lessor may withhold approval if Lessor determines that such proposed use involves a material risk of a release or discharge of Hazardous Materials or a violation of any Hazardous Materials Laws or that Lessee has not provided reasonable assurances of its ability to remedy such a violation and fulfill its obligations under this Article 9.

§9.05. Lessee shall strictly comply with, and shall maintain the Pad in compliance with, all Hazardous Materials Laws in so far as the same is required as a result of the acts or omissions of Lessee, any assignee or sublessee of Lessee and their respective agents, servants, contractors and employees. Lessee shall obtain and maintain in full force and effect all permits, licenses and other governmental approvals required for Lessee's operations on the Pad under any Hazardous Materials Laws and shall comply with all terms and conditions thereof. At Lessor's request, Lessee shall deliver copies of, or allow Lessor to inspect, all such permits, licenses and approvals. Lessee shall perform any monitoring, investigation, clean-up, removal and other remedial work (collectively, "**Remedial Work**") required as a result of any release or discharge of Hazardous Materials affecting the Pad or the Shopping Center or any violation of Hazardous Materials Laws by Lessee or any assignee or sublessee of Lessee or their respective agents, contractors, employees, licensees, or invitees. Lessor shall have the right to intervene in any governmental action or proceeding involving any Remedial Work, and to approve performance of the work, in order to protect Lessor's interests.

§9.06. Lessee shall comply with the requirements of Lessor's and Lessee's respective insurers regarding Hazardous Materials and with such insurers' recommendations based upon prudent industry practices regarding management of Hazardous Materials.

§9.07. Lessee shall notify Lessor, in writing, within two (2) days after any of the following: (a) a release or discharge on the Demised Premises of any Hazardous Material, whether or not the release or discharge is in quantities that would otherwise be reportable to a public agency; (b) Lessee's receipt of any order of a governmental agency requiring any Remedial Work pursuant to any Hazardous Materials Laws; (c) Lessee's receipt of any warning, notice of inspection, notice of violation or alleged violation, or Lessee's receipt of notice or knowledge of any proceeding, investigation or enforcement action, pursuant to any Hazardous Materials Laws; or (d) Lessee's receipt of notice or knowledge of any claims made or threatened by any third party against Lessee or the Pad relating to any loss or injury resulting from Hazardous Materials. Lessee shall deliver to Lessor copies of all test results, reports and business or management plans required to be filed with any governmental agency pursuant to any Hazardous Materials Laws.

§9.08. Upon the termination or expiration of this Lease, Lessee shall remove any equipment, improvements or storage facilities utilized by Lessee, any assignee or sublessee of Lessee or their respective agents, servants, contractors or employees in connection with any Hazardous Materials and shall, clean up, detoxify, repair and otherwise restore the Pad to a condition free of Hazardous Materials resulting from the acts or omissions of Lessee, any assignee or sublessee of Lessee or their respective agents, servants, contractors or employees.

§9.09. Lessee shall protect, indemnify, defend and hold Lessor harmless for, from and against any and all Losses and Liabilities, investigations and proceedings arising out of or in connection with any breach of any provisions of this Article 9 or directly or indirectly arising out of the use, generation, storage, release, disposal or transportation of Hazardous Materials by Lessee or any sublessee or assignee of Lessee, or their respective Representatives, agents, contractors, employees, licensees, or invitees, on, under or about the Pad during the Lease Term or Lessee's occupancy of the Pad, including, but not limited to, all foreseeable and unforeseeable consequential damages and the cost of any Remedial Work. Neither the consent by Lessor to the use, generation, storage, release, disposal or transportation of Hazardous Materials nor the strict compliance with all Hazardous Material Laws shall excuse Lessee from Lessee's indemnification obligations pursuant to this Article 9. The foregoing indemnity shall be in addition to and not a limitation of the indemnification provisions of Article 18 of this Lease. Lessee's obligations pursuant to this Article 9 shall survive the termination or expiration of this Lease.

§9.10. **Intentionally Omitted.**

§9.11. Lessor and its Representatives shall have the right, but not the obligation, to enter the Pad at all reasonable times to inspect the Pad and Lessee's compliance with the terms and conditions of this Article 9, or to conduct investigations and tests. Lessor shall have the right, but not the obligation, to remedy any violation by Lessee of the provisions of this Article 9 or to perform any Remedial Work which is necessary or appropriate as a result of any governmental order, investigation or proceeding. Lessee shall pay, upon demand, as additional rent, all costs incurred by Lessor in remedying such violations or performing all Remedial Work, together with an administrative fee equal to ten percent

§4.02. Nothing herein contained shall require Lessee to pay any municipal, state or federal net income, gift, estate, inheritance or excess profits taxes assessed against Lessor.

§4.03. Intentionally Omitted.

§4.04. Lessor and Lessee shall each furnish the other with whatever information, documents or records that may be required and otherwise cooperate so as to permit the Demised Premises to be assigned a separate tax roll number for any taxing authority having jurisdiction to assess and collect Impositions. Should the Demised Premises be separately assessed, Lessee shall pay such separately assessed Imposition(s) according to this Article 4 and Lessor and Lessee shall file with the Maricopa County Assessor such documentation and information as may be necessary to cause the billings for Impositions to be forwarded directly to Lessee.

§4.05. Intentionally Omitted.

§4.06. If at any time during the Lease Term, any authority having the power to tax including, without limitation, the Town, any federal, state, county or municipal government or any political subdivision thereof (hereinafter collectively referred to as "taxing authority" for purposes of this paragraph only), shall alter the methods and/or standards of taxation and assessment (hereinafter referred to as the "tax plan" for purposes of this paragraph only), against the legal or equitable interests of Lessor or any Mortgagee in the Demised Premises, the Building and/or the Improvements in whole or in part, so as to impose a tax plan in lieu of or in addition to the tax plan in existence as of the date of this Lease, such taxes or assessments based upon such other tax plan, including without limitation (i) a tax, assessment, surcharge, fee, levy, penalty, bond or similar imposition (hereinafter collectively referred to as "New Impositions" for purposes of this paragraph only), on Lessor's right to rental or other income from the Demised Premises or as against Lessor's business of leasing the Demised Premises, (ii) any New Impositions in substitution or in lieu of, partially or totally, any Impositions assessed upon real property prior to any such alteration in the tax plan, (iii) any New Impositions allocable to or measured by the area of the Demised Premises or the rental payable hereunder, including without limitation any New Impositions levied by any taxing authority with respect to the receipt of such rental or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Lessee of the Demised Premises or any portion thereof, or (iv) any New Impositions upon this Lease transaction or any document to which Lessee is a party which creates or transfers any interest or estate in or to the Demised Premises, then Lessee shall pay to Lessor, in addition to and along with the rental otherwise payable hereunder, a sum equal to the aggregate of any taxing authority's sales, use or privilege taxes legally levied or imposed, or hereafter legally levied or imposed, during the Lease Term against or on account of the amounts payable hereunder, or the receipts thereof by Lessor (except state, federal or any other net income taxes, gift taxes, inheritance taxes and estate taxes imposed or levied against Lessor), which shall be paid monthly with the installments of Minimum Rent as provided in this Lease. Any special, unforeseen or extraordinary New Impositions however described, shall be considered as "Impositions" for the purposes of this Lease, excluding, however, from such Impositions all net income taxes, gift taxes, inheritance taxes and estate taxes of Lessor.

§4.07. If the Demised Premises is separately assessed, Lessee shall have the right, after prior written notice to Lessor, to contest by appropriate legal proceedings, diligently conducted in good faith, in the name of Lessee or Lessor or both, without cost or expense to Lessor, the validity or application of any Impositions, subject to the following:

(a) If by the terms of any such Impositions, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrance of any lien, charge, liability or penalty of any kind against the Demised Premises, the Building or the Improvements or Lessee's leasehold interest therein and without subjecting Lessor to any liability, civil or criminal, for failure so to comply therewith, Lessee may delay compliance therewith until the final determination of such proceeding.

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Lessee nevertheless, on the prior written consent of Lessor (such consent not to be unreasonably withheld), may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Lessor to criminal liability and Lessee (i) furnishes to Lessor security, reasonably satisfactory to Lessor against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence and in good faith.

(c) Lessor shall, at Lessee's sole cost and expense, including reasonable attorneys' fees, execute and deliver any appropriate papers which may be necessary or proper to permit Lessee to contest the validity or application of any such Impositions. Lessee shall indemnify Lessor from any loss, cost or expense arising from such proceedings

§4.08. In addition to Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent and any other charges due from Lessee under this Lease, Lessee shall pay to Lessor, together with the installments of Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent and other charges due under this Lease, as the case may be, an amount equal to any state, county or municipal sales, rental, occupancy or use taxes assessed or levied upon Lessor with respect to the amounts paid by Lessee to Lessor hereunder, as well as all taxes assessed or imposed upon Lessor's gross receipts or gross income from leasing the Demised Premises to Lessee, including, without limitation, transaction privilege taxes, education taxes, any tax now or hereafter imposed by the State of Arizona, any other governmental body with jurisdiction and any taxes assessed or imposed in lieu of or in substitution of any of the foregoing taxes. Such taxes shall not, however, include any franchise, gift, estate, inheritance, conveyance, transfer or net income tax assessed against Lessor.

## ARTICLE 5

### SURRENDER

§5.01. Lessee covenants and agrees to not hold over without the express written consent of Lessor and shall on the last day of the Lease Term or upon any earlier termination of this Lease, surrender and deliver up the Pad to the Lessor and, subject to the provisions of §14.03(b), in good order, condition and repair, reasonable wear and tear excepted and Lessee shall deliver to Lessor all keys to the Building.

§5.02. Subject to the rights of the Leasehold Mortgagee (as defined in §32.01), any property of Lessee, including Removable Personal Property and trade fixtures, which shall remain on the Demised Premises, or in the Building, after the termination or expiration of this Lease and the removal of Lessee from the Demised Premises and the Building may, at the option of Lessor, be deemed to have been abandoned by Lessee and either may be retained by Lessor as its property or be disposed of in such manner as Lessor may see fit.

§5.03. Intentionally Omitted.

§5.04. If requested to do so by Lessor, Lessee shall, upon the expiration or earlier termination of this Lease, execute, acknowledge and deliver to Lessor such instruments of further assurance, as in the opinion of Lessor are necessary or desirable to confirm or perfect the right, title and interest of the Lessor in and to the Pad and any other property surrendered to Lessor pursuant to this Lease, free and clear of any claim by Lessee.

§5.05. Within thirty (30) days after the expiration or earlier termination of this Lease, but only if the Demised Premises has been used for a purpose other than the operation of a restaurant, Lessee shall obtain, at its sole cost and expense, and shall deliver to Lessor, an environmental assessment, prepared by a Person reasonably acceptable to Lessor, indicating whether there exists at the Demised Premises any condition that would constitute a violation of any applicable Hazardous Materials Laws and representing to Lessor that no Hazardous Materials are present, in, on, or under the Demised Premises and that no impairment to the environment exists as a result of the development and operation of the Demised Premises by Lessee, any Transferee, or their respective agents, servants, contractors or employees. Lessee covenants and agrees that it shall be liable for and shall indemnify, defend and hold Lessor harmless for, from and against any and all Losses and Liabilities which may in any manner be asserted against or incurred by Lessor as a result of or arising out of the use by Lessee, any Transferee, or their respective agents, servants, contractors or employees of Hazardous Materials in the Demised Premises. If the environmental assessment discloses the presence of Hazardous Materials and/or any violations of Hazardous Materials Laws, Lessee shall, immediately following receipt of the environmental assessment commence and thereafter diligently pursue to completion the necessary Remedial Work (as defined in §9.05) and shall furnish, at its sole cost and expense, a later dated environmental assessment representing and warranting to Lessor that the previously disclosed Hazardous Materials have been remediated and/or previously disclosed violations of applicable Hazardous Materials Laws have been cured in accordance with applicable Governmental Restrictions.

## ARTICLE 6

### INSURANCE

§6.01. Lessee, at its sole cost and expense, shall, during the entire Lease Term, keep the Building insured against loss or damage by fire and against loss or damage by such other risks now or hereafter embraced by "Causes of Loss-Special Form", utilizing a form of policy providing coverage at least as broad as ISO policy form CF 10 30, including earthquake damage coverage, together with insurance against sprinkler damage, vandalism and malicious mischief, as well as the following endorsements: boiler and machinery, business income and extra expense (with extended period of

(iii) would duplicate the primary use of another tenant or occupant of the Shopping Center, or (iv) would be inconsistent with the uses frequently found in other first class, institutional grade shopping centers in the Phoenix, Arizona metropolitan area, or (v) if there is then in existence an Event of Default under this Lease (any required notice having been given and any applicable cure period having expired). In no event may Lessee use the Demised Premises as or for (1) an auditorium or other similar place of general assembly; (2) an indoor flea market; (3) a secondhand store, thrift store, swap shop, liquidation outlet or used clothing store, including any business that regularly sells merchandise referred to as "odd lot", "cancellation", "second", "factory reject", "sample", "floor model", "floor demonstrator", "obsolescent", "distressed", "salvage" or "damaged"; (4) a massage parlor; (5) a cemetery/crematorium; (6) a so-called "head shop" or facility for the sale, rental, distribution or display of drug paraphernalia such as roach clips, bongos, water pipes, coke spoons, cigarette wrapping papers, pipes and/or syringes; (7) a facility for the sale, rental, display or distribution of pornographic, lewd, sexually explicit or so-called adult material; (8) an off-track betting parlor, bowling alley, billiard parlor, pool room, game room, amusement arcade or gaming hall; (9) an automobile body shop, truck stop, junk yard or motor vehicle dismantling operation; (10) a recycling facility, except as required pursuant to Governmental Restrictions; (11) a stock yard; (12) a traveling carnival, circus or fair; (13) a coin operated laundry or dry cleaner; (14) the sale, rental or storage of motor vehicles; (15) shows; (16) booths for the sale of fireworks; (17) churches, temples or other houses of religious worship, including a charity dining hall; (18) any establishment conducting games of chance; (19) a pawn shop; (20) a bingo hall; (21) a rehabilitation center for physical, mental or substance abuse rehabilitation or treatment; (22) a funeral home or funeral parlor; (23) a business which creates strong, unusual or offensive odors, fumes, dusts or vapors, is a public nuisance, emits noise or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness, or creates a hazardous condition; (24) the dumping or disposing of garbage or refuse; (25) offices, except as may be incidental to a retail operation; (26) any residential, production, manufacturing, industrial or storage use of any kind or nature except for storage and/or assembly of products incidental to the Permitted Use of the Demised Premises; (27) check cashing services; (28) the conduct of any auction, loss of lease, fire, bankruptcy or going out of business sale; (29) a school, including the operation of a preschool or day care center; (30) a theatre; (31) a "tattoo parlor" or "piercing parlor," so called; (32) the outdoor housing of animals; (33) a cocktail lounge, bar, tavern, or nightclub but this shall not prohibit the sale of beer and wine for on premises consumption in conjunction with the Permitted Use; (34) intentionally omitted, (35) environmental remediation facility, (36) exterminating service, (37) butane distribution, (38) exterminating and fumigating warehouse, (39) bulk storage of gasoline or fuel oil tanks, (40) bulk storage of paint and varnish, (41) petroleum products packaging and storage, (42) adult theater or so-called "gentlemen's club" featuring nude, topless or scantily clad men or women, but this restriction shall not be deemed to include a first-class discotheque or first-class nightclub, (43) day labor hiring hall, (44) commercial loading of small arms or manufacture of ammunition, (45) rock quarrying, sand and gravel or other mineral extraction, (46) transit terminal (except to the extent required by governmental authorities having jurisdiction), (47) propane sales except as incidental to other retail sales or service, (48) drive-in movie theater, (49) concrete or cement products manufacturing, (50) plating or polishing shop, (51) plating works or electric plating, (52) foster home or group foster home, (53) farm devoted to hatching, raising, breeding and marketing of chickens, turkeys or other fowl, rabbits, fur-bearing animals or fish, (54) feeder lot for horses, cattle, goats or sheep, (55) dairy farm, (56) bail bond company, (57) body and fender shop (58) cannery, slaughter house or meat processing or packaging plant, (59) cesspool service, (60) flour or grain elevator, (61) motor vehicle fuel distribution facility, (62) outdoor hay and straw storage, (63) repair and rewinding of transformers or generators, (64) outdoor paving materials storage, (65) welding shop, (66) shelter or dormitory intended to provide temporary shelter, (67) residential uses, (68) the operation of an "order fulfillment center" or for the purchase, sale or distribution, whether in person, by catalog, by telephone or by computer, of goods or merchandise not comprising the Permitted Use of the Demised Premises, (69) any business which operates on a part-time basis for only a portion of the week or month; (70) an automatic teller machine; (71) any use prohibited by the Declarations and/or the Development Agreement; (72) any governmental use; and (73) any use that, in Landlord's reasonable business judgment, is inconsistent with the operation of a first class, institutional grade Shopping Center.

§12.02. Lessor and Lessee acknowledge and agree that the Shopping Center is an interdependent enterprise and that a material consideration to the execution of this Lease by Lessor is the agreement by Lessee to continuously operate at the Pad during the first two (2) years of the Lease Term. ACCORDINGLY, IN THE EVENT THAT LESSEE SHALL AT ANY TIME DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM FAIL TO CONTINUOUSLY OPERATE WITHIN THE DEMISED PREMISES (EXCEPT FOR TEMPORARY CLOSURES RESULTING FROM DAMAGE, DESTRUCTION OR REMODELING) (NOT TO EXCEED, HOWEVER, NINETY (90) DAYS WITH RESPECT TO REMODELING), AS LIQUIDATED DAMAGES TO LESSOR, MINIMUM RENT SHALL BE PAYABLE AT TWO (2) TIMES THE RATE SET FORTH IN ARTICLE 1 UNTIL THE EARLIER OF (A) THE EXPIRATION OF THE FIRST TWO (2) YEARS OF THE LEASE TERM, OR (B) SUCH TIME AS LESSEE RECOMMENCES CONTINUOUS OPERATIONS WITHIN THE DEMISED PREMISES. IN THE EVENT LESSEE FAILS TO CONTINUOUSLY OPERATE WITHIN THE PAD DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM, LESSOR AND LESSEE AGREE THAT GIVEN THE

INDUCEMENT AND CO-TENANCY PROVISIONS THAT MAY BE CONTAINED IN OTHER LEASES WITHIN THE SHOPPING CENTER AND THE NEGATIVE IMPACT ON LESSOR'S ABILITY TO FINANCE, LEASE AND MARKET THE SHOPPING CENTER RESULTING FROM VACANT SPACE WITHIN THE SHOPPING CENTER, IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE ACTUAL DAMAGES TO BE SUFFERED BY LESSOR AS A RESULT OF LESSEE'S FAILURE TO CONTINUOUSLY OPERATE WITHIN THE PAD DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THE IMMEDIATELY PRECEDING SENTENCE REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH LESSOR WOULD INCUR AS A RESULT OF LESSEE'S FAILURE TO CONTINUOUSLY OPERATE DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM. THEREFORE, LESSOR AND LESSEE AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT LESSOR WOULD SUFFER IN THE EVENT LESSEE FAILS TO CONTINUOUSLY OPERATE IN THE PAD DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM IS AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION. SUCH AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH BY LESSEE OF ITS AGREEMENT TO CONTINUOUSLY OPERATE WITHIN THE PAD DURING THE FIRST TWO (2) YEARS OF THE LEASE TERM. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR A PENALTY, BUT IS INTENDED TO CONSTITUTE REASONABLE LIQUIDATED DAMAGES TO LESSOR.

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Lessee's Initials

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Lessor's Initials

If Lessee's failure to conduct continuous operations within the Demised Premises during the first two (2) years of the Lease Term continues for thirty (30) days (except as provided herein), Lessor shall have the right, in addition to all other rights and remedies available to Lessor under this Lease, to terminate Lessee's right of possession of the Demised Premises by delivering to Lessee at any time after the expiration of such thirty (30) day period (but prior to Lessee's commencement of continuous operations within the Demised Premises) written notice of termination, which termination shall be effective thirty (30) days after Lessee's receipt thereof. If Lessor elects to exercise the remedy available to Lessor under this §12.02 as a result of Lessee's failure to continuously operate at the Pad during the first two (2) years of the Lease Term, such remedy shall be the sole and exclusive remedy available to Lessor as a result of the failure by Lessee to continuously operate at the Pad during the first two (2) years of the Lease Term.

§12.03. Intentionally Omitted.

§12.04. Lessee shall pay all charges for water, sewer, gas, heat, air conditioning, electricity, telephone, lights, steam, trash disposal and any other utility services used, rendered and/or supplied exclusively to or in the Demised Premises, the Building and the Improvements as the same shall become due and payable and shall indemnify, defend and hold Lessor harmless for, from and against any Losses or Liabilities in connection therewith.

§12.05. All times during the Lease Term, Lessor shall have the right to select the utility company or companies that shall provide electric, telecommunication and/or other utility services to the Pad (including a utility company that is an Affiliate of Lessor) and, subject to all applicable Governmental Restrictions, Lessor shall have the right at any time and from time to time during the Lease Term to either (a) contract for services from electric, telecommunication and/or other utility service provider(s) other than the provider with which Lessor has a contract as of the Effective Date (the "Current Provider"), or (b) continue to contract for services from the Current Provider. Lessee shall at all times cooperate with Lessor and any electric, telecommunication and/or other utility service provider with which Lessor has contracted and, as reasonably necessary, shall allow Lessor or such electric service provider reasonable access to any electric, telecommunication and/or other utility lines, feeders, risers, wiring and any other machinery within the Pad. Lessor shall not be liable in damages or otherwise for any loss, damage or expense that Lessee may sustain or incur by reason of any change, failure, interference, interruption or defect in the electric, telecommunication and/or other utility services provided to the Pad. No such change, failure, interference, interruption or defect shall entitle Lessee to terminate this Lease or to abate the payments Lessee is required to make under this Lease, unless such interruption in service (i) continues for three (3) consecutive business days, and (ii) is the result of the negligence of Landlord or Landlord's employees, agents, contractors, or servants, and (iii) has a material and adverse effect on Tenant's business in the Premises, in which event Minimum Rent and other charges shall abate until such interruption in service is corrected. In the event Lessor elects to redistribute electric utility service to the Pad, Lessee shall not be obligated to pay for the cost of such electric services to the extent such cost exceeds the kilowatt per hour charge for electric service to the Pad that Lessee would have incurred had Lessee contracted directly with a utility company of Lessee's choice. Lessee acknowledges that the covenants and agreements contained in this §12.05 are reasonable and necessary to protect the legitimate

business interests of Lessor and that any violation of these covenants or provisions would result in irreparable injury and entitle Lessor to equitable relief.

§12.06. Lessor and Lessee acknowledge that the Shopping Center is an interdependent enterprise and that the realization of the benefits of this Lease, both to Lessor and Lessee, are dependent upon Lessee creating and maintaining a successful and profitable retail operation in the Pad. Lessor and Lessee further acknowledge that the character and quality of Lessee's operation and of the Shopping Center will be enhanced by Lessee's use of its best efforts to establish a successful character and image. Accordingly, Lessee and its Affiliates shall not, during the Lease Term, directly or indirectly engage in as owner, operator, proprietor, manager, stockholder, officer, director, franchisor, franchisee, principal, agent, Representative, lender, consultant or partner any business having the same trade name as the Trade Name and/or conducting a use substantially similar to the Permitted Use (not so operated or owned on the Effective Date) within a radius of five (5) miles from the location of the Pad. **WITHOUT LIMITING LESSOR'S RIGHT TO ENJOIN ANY VIOLATION BY LESSEE OF THE PROVISIONS OF THIS §12.06, IN THE EVENT LESSEE OR ITS AFFILIATES SHOULD VIOLATE THIS NON-COMPETITION COVENANT, LESSOR MAY, FOR SO LONG AS LESSEE OR ITS AFFILIATES ARE OPERATING THE COMPETING BUSINESS, AS LIQUIDATED DAMAGES, INCLUDE EIGHTY PERCENT (80%) OF THE GROSS SALES OF THE COMPETING BUSINESS, IF SUCH COMPETING BUSINESS IS LOCATED WITHIN TWO (2) MILES FROM THE LOCATION OF THE PAD, OR FORTY-FIVE PERCENT (45%) OF THE GROSS SALES OF THE COMPETING BUSINESS, IF THE COMPETING BUSINESS IS LOCATED MORE THAN TWO (2) MILES FROM THE LOCATION OF THE PAD, IN THE GROSS SALES MADE FROM THE PAD FOR THE PURPOSE OF COMPUTING THE PERCENTAGE RENTAL DUE UNDER ARTICLE 1. IN THE EVENT LESSEE VIOLATES THE NON-COMPETITION COVENANT CONTAINED IN THIS §12.06, LESSOR AND LESSEE AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE ACTUAL DAMAGES TO BE SUFFERED BY LESSOR AS A RESULT OF LESSEE'S VIOLATION OF THE NON-COMPETITION COVENANT CONTAINED IN THIS §12.06 AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS LEASE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THE IMMEDIATELY PRECEDING SENTENCE REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH LESSOR WOULD INCUR AS A RESULT OF LESSEE'S VIOLATION OF THE NON-COMPETITION COVENANT CONTAINED IN THIS §12.06. THEREFORE, LESSOR AND LESSEE DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT LESSOR WOULD SUFFER IN THE EVENT THAT LESSEE VIOLATES THE NON-COMPETITION COVENANT CONTAINED IN THIS §12.06 IS AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS ARTICLE. SUCH AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH BY LESSEE OF THE NON-COMPETITION COVENANT CONTAINED IN THIS §12.06. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE REASONABLE LIQUIDATED DAMAGES TO LESSOR.**

  
Lessee's Initials

  
Lessor's Initials

Lessee acknowledges that the restrictions contained in this §12.06 are reasonable and necessary to protect the legitimate business interests of Lessor and that any violation of these restrictions would result in irreparable injury and entitle Lessor to equitable relief. If it is determined by a court of competent jurisdiction that these restrictions, in whole or in part, are illegal or unenforceable, then Lessor and Lessee authorize the court to reduce the scope of the restrictions so as to conform with the requirements of law. Lessee acknowledges that Lessee has not been granted an exclusive right to conduct the Permitted Use within the Shopping Center.

§12.07.

(a) Except as expressly set forth in this Lease, no damages, compensation, claims or Losses and Liabilities shall be payable by Lessor and this Lease and the obligation of Lessee to perform all of its covenants and agreements set forth in this Lease shall in no way be affected, impaired, reduced or excused in the event that there shall be an interruption, curtailment or suspension of the Shopping Center's utility, sanitary, elevator, water, telecommunications, security (including equipment, devices, and personnel) or other Shopping Center systems serving the Demised Premises or any other services required by Lessor under this Lease (an "Interruption of Service"), by reason of: (a) any damage or destruction which is the subject of Article 14, (b) any condemnation which is the subject of Article 15, (c) an accident, (d) an emergency, (e) shortages of labor or materials, or (f) an event of Force Majeure including, but not limited to, (i) a lack of access to the Shopping Center or the Demised Premises (which shall include, but not be limited to, a lack of access to the Shopping or the Demised Premises when it

or they are structurally sound, but inaccessible due to evacuation of the surrounding area or damage to any nearby structures or public areas; (ii) any cause outside of the Shopping Center; (iii) reduced air quality or other contaminants within the Shopping Center that would adversely affect the Shopping Center or its occupants (including, but not limited to, the presence of biological or other airborne agents within the Shopping Center or the Demised Premises); (iv) disruption of mail or deliveries to the Shopping Center or the Demised Premises resulting from damage or destruction which is the subject of Article 14; (v) disruption of telephone and telecommunication services to the Shopping Center or the Demised Premises resulting from damage or destruction which is the subject of Article 14; or (vi) blockages of any windows, doors or walkways to the Shopping Center or the Demised Premises resulting from damage or destruction which is the subject of Article 14.

(b) Lessor reserves the right, without any liability to Lessee, except as otherwise expressly set forth in this Lease, and without being in breach of any covenant of this Lease. In each instance, Lessor shall exercise reasonable diligence to eliminate the cause of the Interruption of Service if resulting from conditions within the Shopping Center and to conclude the Interruption of Service. Lessor shall give Lessee written notice, of the commencement and anticipated duration of any such Interruption of Service.

(c) The occurrence of an Interruption of Service pursuant to this §12.07 shall not (a) constitute an actual or constructive eviction of Lessee in whole or in part; (b) entitle Lessee to any abatement or diminution of Minimum Rent, Impositions, Common Area Expenses, additional rent or other charges payable under this Lease (except as otherwise expressly set forth in this Lease) unless such Interruption of Service (i) continues for three (3) consecutive business days, and (ii) is the result of the negligence of Landlord or Landlord's employees, agents, contractors or servants, and (iii) has a material and adverse effect on Lessee's business in the Demised Premises, in which event Minimum Rent and other charges shall abate until such Interruption of Service is corrected; (c) relieve or release Lessee from any of its obligations under this Lease; or (d) entitle Lessee to terminate this Lease.

§12.08. If any time after the first two (2) years of the Lease Term, Lessee fails to conduct business operations from the Demised Premises for thirty (30) consecutive days (except for temporary closures resulting from damage or destruction or for the permitted closures described in the first sentence of §12.01), Lessor may, by delivering written notice to Lessee, elect to terminate this Lease, which termination shall be effective thirty (30) days after receipt by Lessee of Lessor's notice, unless prior to the expiration of such thirty (30) day period, Lessee resumes business operations from the Demised Premises. Upon the Effective Date of any termination of this Lease pursuant to the provisions of this §12.08, Lessor shall pay to Lessee the then unamortized cost (calculated in accordance with generally accepted accounting principles, consistently applied), of the Building and Improvements constructed by Lessee on the Demised Premises. Lessee shall, within thirty (30) days following Lessor's written request, certify to Lessor the then unamortized cost, calculated in accordance with generally acceptable accounting principles, consistently applied, of the Building and Improvements constructed by Lessee on the Demised Premises.

## ARTICLE 13

### ENTRY ON DEMISED PREMISES BY LESSOR

§13.01. In addition to Lessor's right of entry under any other provision of this Lease, Lessee shall permit Lessor's authorized representatives to enter the Demised Premises, the Building and the Improvements at all reasonable times upon reasonable advance written notice (except in the event of an emergency) for the purpose of (a) inspecting the same, and (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Lessee's failure to make any such repairs or perform any such work or to commence the same for thirty (30) days after written notice from Lessor or without notice or upon less notice in case of an emergency. Nothing herein contained shall create or imply any duty upon the part of Lessor to make any such repairs or do any such work.

§13.02. Lessor shall have the right to enter the Demised Premises, the Building and the Improvements at all reasonable times during usual business hours upon reasonable advance written notice for the purpose of showing the same to prospective purchasers or at any time within nine (9) months prior to the expiration of the Lease Term, to prospective lessees.

§13.03. The Mortgagee and its Representatives shall have the right, at all reasonable times, upon twenty four (24) hours advance written notice (or without notice in the event of an emergency) to enter upon the Demised Premises, the Building and the Improvements or any part thereof, to inspect the same.

§13.04. Any entry on the Demised Premises pursuant to this Article 13 shall be in such a manner so as to not disturb or interfere with Lessee's business on the Demised Premises.

#### ARTICLE 14

##### DAMAGE OR DESTRUCTION

§14.01. In case of damage to or destruction of the Demised Premises or the Building and the Improvements by fire or other casualty, except as set forth in §14.03, Lessee, at Lessee's sole cost and expense, without abatement of Minimum Rent or additional rent, shall restore, repair, replace, rebuild or alter the same as nearly as possible to their value, condition and character immediately prior to such damage or destruction. Such restoration, repairs, replacements, rebuildings or alterations shall be commenced within ninety (90) days after receipt of insurance proceeds payable with respect to such fire or other casualty, shall be prosecuted with due diligence and in good faith, and shall be completed within two hundred seventy (270) days after receipt of insurance proceeds payable with respect to such fire or other casualty, subject to Force Majeure. In the event of damage to or the destruction of the Demised Premises and/or the Building and Improvements resulting in a loss exceeding in the aggregate Fifty Thousand and No/100 Dollars (\$50,000.00), Lessee shall promptly give written notice thereof to Lessor.

§14.02. Unless the insurance proceeds payable on account of damage to or destruction of the Demised Premises by fire or other casualty maintained by Lessee pursuant to the provisions of §6.01 above are payable jointly to Lessor and Lessee to be used to restore the Demised Premises and the Building and Improvements thereon, all such insurance proceeds payable on account of damage to or destruction of the Demised Premises by fire or other casualty shall be deposited with the Leasehold Mortgagee or, in the absence of a Leasehold Mortgagee, a bank or trust company doing business in the State of Arizona having assets of at least Five Hundred Million and No/100 Dollars (\$500,000,000.00) (the "Depository"), in trust for the purpose of reimbursement of the costs of the demolition, restoration, repairs, replacements, rebuilding or alterations to the Demised Premises. Insurance proceeds on deposit with the Depository shall be advanced from time to time to Lessee for the restoration work as such work progresses, upon certification by the architect or engineer in charge of such restoration work that the amounts requested either shall have been paid in connection with such restoration work or shall be due to contractors, subcontractors, materialmen, architects or other Persons who rendered services or furnished materials on account of the restoration work and, upon completion of such restoration work, the balance remaining in the Depository if any, shall be disbursed to Lessee. Notwithstanding the foregoing, in the event of damage to or destruction of the Demised Premises by fire or other casualty as a result of which the proceeds of insurance are less than Twenty Five Thousand and No/100 Dollars (\$25,000.00), such proceeds shall be payable directly to Lessee in trust, to be applied against the cost of restoring the Demised Premises and such funds shall be used only for the purpose of restoring the Demised Premises until such restoration work is complete and any excess proceeds may be retained by Lessee.

§14.03. If the Building and Improvements shall be damaged or destroyed by fire or other casualty within two (2) years prior to the expiration of the Lease Term, and the cost of restoration exceeds fifty percent (50%) of the then replacement cost of the Building and Improvements, as estimated by a licensed architect or a licensed professional engineer, selected by Lessee and approved in writing by Lessor (which approval shall not be unreasonably withheld, conditioned or delayed), Lessee shall have the option of:

(a) restoring, repairing, replacing, rebuilding or altering the Building and Improvements as provided in this Lease, or

(b) terminating this Lease by written notice to Lessor given within sixty (60) days after such destruction or damage, which termination shall be effective on a date set forth in Lessee's notice to Lessor, which date shall be no sooner than thirty (30) days after delivery by Lessee to Lessor of such notice of termination.

§14.04. In the event of a termination under §14.03(b), Lessee shall not be entitled to any portion of the proceeds of any insurance with respect to the Building and Improvements, including but not limited to, the property insurance, all of which shall become the sole property of the Lessor, subject, however, to the rights of any Leasehold Mortgagee. Lessee shall, however, be entitled to any insurance proceeds payable to Lessee with respect to its inventory, trade fixtures and Removable Personal Property.

§14.05. If the Building and Improvements shall be damaged or destroyed by a casualty or event which is not covered by property insurance maintained (or required to be maintained) pursuant to §6.01 above and the cost of restoration exceeds twenty-five percent (25%) of the replacement cost of the Building and Improvements (excluding, however, footings and foundations), as estimated by a licensed architect or a licensed professional engineer, selected by Lessee and approved in writing by Lessor, Lessee shall have the option of:

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(a) restoring, repairing, replacing, rebuilding or altering the Building and Improvements as provided in this Lease, or

(b) terminating this Lease by written notice to Lessor given within sixty (60) days after such destruction or damage, which termination shall be effective on a date set forth in Lessee's notice to Lessor, which date shall be no sooner than thirty (30) days after delivery by Lessee to Lessor of such notice of termination.

§14.06. At the time of a termination under §14.03(b) or §14.05(b) (as distinguished from the expiration of the Lease Term) Lessee shall at once surrender and deliver up the Demised Premises and the Building and Improvements and shall remove all of its personal effects, inventory, trade fixtures and Removable Personal Property from the Demised Premises, provided, however, Lessee shall first remove any damaged or destroyed Building and Improvements and shall restore the Demised Premises to natural grade. Lessee upon such termination, surrender and removal, shall be released and discharged from any and all obligations that would have otherwise thereafter accrued had this Lease not been so terminated.

§14.07. If Lessee does not commence repair and reconstruction of the damaged or destroyed Building and Improvements on the Demised Premises within the time period set forth in §14.01 or if Lessee does not complete reconstruction of the damaged or destroyed Building and Improvements within the time period set forth in §14.01, Lessor may, if it so elects, by delivering written notice to Lessee, terminate this Lease, which termination shall be effective thirty (30) days after delivery by Lessor of such notice of termination to Lessee, unless prior to the expiration of such thirty (30) day period, Lessee commences or completes, as the case may be, repair and restoration of the damaged or destroyed Building and Improvements. Upon the effective date of such termination, subject to the rights of any Leasehold Mortgagee, any proceeds of insurance (or self insurance) then on deposit in the Depository shall be disbursed to Lessor free and clear of any claim of Lessee.

§14.08. Lessee hereby Waives any statutory and/or common law rights of termination which may arise by any reason of any partial or total destruction of the Demised Premises, and/or the Building or Improvements thereon including, without limitation, the provisions of A.R.S. §33-343.

## ARTICLE 15

### CONDEMNATION

§15.01. If at any time during the Lease Term, title to the whole or materially all of the Demised Premises shall be taken by the exercise of the right of condemnation or eminent domain, or by agreement between the Lessor, Lessee and those authorized to exercise such right, this Lease shall terminate and expire on the date of such taking, and the Minimum Rent and Percentage Rent required to be paid by Lessee shall be apportioned and paid to the date of such taking. For purposes of this §15.01 "materially all of the Demised Premises" shall be deemed to have been taken if the portion of the Demised Premises not so taken cannot be so repaired or reconstructed so as to constitute a complete rentable structure capable of producing a proportionately fair and reasonable net annual income; after the payment of all expenses thereof and all Minimum Rent and Percentage Rent and other charges required to be paid by Lessee hereunder and after performance of all covenants, agreements, terms and provisions herein and by law provided to be performed and paid by Lessee. The average net annual income produced by the Demised Premises during the five (5) year period immediately preceding such a taking shall be deemed to constitute a fair and reasonable net annual income for the purposes of this §15.01.

§15.02. In the event of the taking of the whole or materially all of the Demised Premises at any time during the Lease Term, the right of Lessor and Lessee to share in the net proceeds of any award for the Demised Premises, the Building, the Improvements and damages upon any such taking shall be as follows and in the following order of priority:

(a) To Lessor, an amount representing the value of Lessor's reversionary interest in the Pad.

(b) Subject to the rights of the Leasehold Mortgagee, to Lessee (to the extent available after the payment in (a) above), the straight line depreciated value of the Building and the unamortized cost of the Improvements.

(c) To Lessor, the balance of the award.

(d) If the values of the respective interests of Lessee and Lessor shall be determined by a court or the awarding authority according to the provisions of subparagraphs (a), (b), and (c) the values so determined shall be conclusive upon Lessor and Lessee. If such value shall not

have been separately determined in the award, such values shall be reasonably determined by the parties.

§15.03. If at any time during the Lease Term, title to less than the whole or less than materially all of the Demised Premises shall be taken as aforesaid, all of the award or awards resulting from said condemnation shall be held by Lessor and applied and paid over to the cost of demolition, repair and restoration in the same manner and subject to the same conditions as those provided in §14.02 with respect to insurance and other monies. Any balance remaining after payment of such costs of demolition, repair and restoration as aforementioned, shall be retained by Lessor and there shall be no adjustment to the Minimum Rent or other charges under this Lease.

§15.04. If the temporary use of the whole or any part of the Demised Premises or the Building or Improvements shall be taken by any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between Lessee and those authorized to exercise such right, Lessee shall give prompt notice thereof to Lessor, and the term of this Lease shall not be reduced or affected in any way. Lessee shall continue to pay in full the Minimum Rent, Percentage Rent, additional rent and other charges required to be paid hereunder, without reduction or abatement, and Lessee shall be entitled to receive for itself any award or payment made for such use.

§15.05. Lessee hereby Waives any statutory and/or common law rights of termination which may arise by any reason of any taking of the Demised Premises, and/or the Building or Improvements thereon including, without limitation, the provisions of A.R.S. §33-343.

#### ARTICLE 16

##### MORTGAGES, ASSIGNMENTS, LEASES AND TRANSFERS OF LESSEE'S INTEREST

§16.01. Lessor and Lessee acknowledge that the Shopping Center is an interdependent enterprise and that the realization of the benefits of this Lease, both to Lessor and Lessee, are dependent upon Lessee's creating and maintaining a successful and profitable retail operation in the Pad. Lessor and Lessee further acknowledge that the character and quality of Lessee's operation, and of the Shopping Center, will be enhanced by Lessee's use of its best efforts to establish a successful character and image. Accordingly, except as expressly set forth in this Lease (including Permitted Transfers pursuant to §16.04), Lessee shall not, and shall not have the power to Transfer, this Lease or Lessee's interest in and to the Pad, or any part thereof (or advertise at the Shopping Center that the Pad or this Lease are available for Transfer) without first procuring the written consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Lessor and Lessee acknowledge and agree that it shall be reasonable for Lessor to withhold its consent to a proposed Transfer if (a) in the case of assignment, the net worth and credit standing of the proposed Transferee, calculated in accordance with generally accepted accounting principles, consistently applied, is not at least equal to the net worth and credit standing of Lessee as of the date of the proposed Transfer, or (b) the proposed Transferee is not a national or regional operation, or (c) the proposed use of the Demised Premises by the proposed Transferee is violative of the provisions of Article 12 of this Lease, or (d) there is then in existence an Event of Default (any required notice having been given and any applicable cure period having expired). Lessee shall submit such information as Lessor may request in connection with Lessee's request for consent to a Transfer, including financial statements and tax returns in order to evaluate the solvency, financial responsibility, and the business acumen and experience of the proposed Transferee. In addition, Lessor and Lessee acknowledge and agree that in executing this Lease, Lessor is relying upon the agreement by Lessee to open for business at the Demised Premises for the Permitted Use of the Demised Premises under the Trade Name in accordance with the provisions of §12.01 above. Accordingly, prior to the Rent Commencement Date, except for a Permitted Transfer pursuant to §16.04, Lessee shall not (and shall not have the right to) Transfer the Demised Premises, this Lease or any interest therein. Any attempted or purported Transfer, without the written consent of Lessor shall constitute an Event of Default and shall be void and shall confer no rights upon any third Person.

§16.02. Each Transfer to which there has been consent shall be by an instrument in a form satisfactory to Lessor, and shall be executed by Lessee and the Transferee in each instance, as the case may be. Each such Transferee shall agree in writing for the benefit of Lessor to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by Lessee, including the payment of all amounts due or to become due under this Lease. An executed copy of such instrument shall be delivered to Lessor. A failure to first obtain in writing Lessor's consent, or a failure to comply with the provisions of this Article 16 shall render any such Transfer null and void, and shall constitute an Event of Default. No Transfer shall relieve Lessee from its covenants and obligations under this Lease.

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§16.03. In the event Lessee shall Transfer its interest in this Lease or the Pad, or any part thereof and the Transferee pays to Lessee rentals or other consideration in excess of the Minimum Rent specified in Article 1, then the Minimum Rent specified in Article 1 shall be increased, effective as of the date of such Transfer to the rentals and other consideration payable by any such Transferee pursuant to such Transfer. In no event shall the Minimum Rent, after such assignment or subletting, be less than the Minimum Rent specified in Article 1.

§16.04. If Lessee is a corporation, an unincorporated association, limited liability company or partnership, the transfer, assignment or hypothecation of forty nine percent (49%) or more of any stock or other ownership interest in such corporation, association, limited liability company or partnership shall be deemed a Transfer within the meaning of and subject to provisions of this Article 16. Notwithstanding the provisions of the preceding sentence to the contrary, Lessor hereby acknowledges and consents to Lessee's right, without further approval from Lessor, but only after written notice to Lessor, to assign this Lease or sublet the Demised Premises (i) to any parent or subsidiary of Lessee, or subsidiary of Lessee's parent, or of the parent or parents of Lessee's parent corporation, or (ii) the event of a merger or consolidation of Lessee with another corporation, or (iii) any holding company, corporation, association or other entity which is or becomes a parent, subsidiary or Affiliate of Lessee or any successor of Lessee by reason of public offering, reorganization, dissolution or sale of stock or assets, and (iv) to a Person who will sublease the Demised Premises back to Lessee by a building lease of even date therewith (the "Permitted Transfers"). A Permitted Transfer shall also include the sale or Transfer of all of the issued and outstanding capital stock of Lessee so long as immediately following such sale or other Transfer, the tangible net worth of Lessee, calculated in accordance with generally accepted accounting principles, consistently applied, is not less than the tangible net worth of Lessee, calculated in accordance with generally accepted accounting principles, consistently applied, as of the Effective Date. In addition, Lessee may grant a concession within the Premises without the consent of Lessor; provided that such concession is a component of Lessee's operation of the Demised Premises for the Permitted Use and the concessionaire does not occupy or rent twenty five percent (25%) or more of the Floor Area of the Building. Further, notwithstanding the provisions of this §16.04 to the contrary, if Lessee is or becomes a corporation whose stock is regularly traded on a nationally stock exchange or is regularly traded in the over the counter market and quoted on NASDAQ, the transfer of stock, regardless of quantity, shall not constitute a Transfer for the purposes of this Lease. No Permitted Transfer shall relieve Lessee of its liability under this Lease and Lessee shall remain primarily liable to Lessor for the payment of all Minimum Rent or other charges due under this Lease and the performance of all covenants and conditions of this Lease applicable to Lessee. Further, notwithstanding the provisions of this §16.04 to the contrary, (i) transfers of stock of Lessee between existing shareholders, between family members and/or family partnerships or trusts created for their benefit for estate planning purposes, and (ii) transfers of stock of Lessee by the existing shareholders of Lessee provided that after such transfer, the shareholders of Lessee, as of the Effective Date, continue to maintain Control of Lessee, shall not be deemed a Transfer within the meaning of and subject to the provisions of this Article 16.

§16.05. If Lessee proposes to assign Lessee's interest in this Lease, Lessor may, at Lessor's option, upon notice to Lessee within thirty (30) days after Lessor's receipt of Lessee's request for consent, elect to recapture the Pad, and within sixty (60) days after notice of such election has been given to Lessee, this Lease shall terminate. If Lessee proposes to sublet all or any part of the Pad, Lessor may, at Lessor's option, upon notice to Lessee within thirty (30) days after Lessor's receipt of Lessee's request for consent, elect to recapture such portion of the Pad as Lessee proposes to sublet, and within sixty (60) days after notice of such election has been given to Lessee, this Lease shall terminate as to the portion of the Pad recaptured. If only a portion of the Pad is recaptured, the Minimum Rent payable under this Lease shall be proportionately reduced. If all or a portion of the Pad is recaptured by Lessor pursuant to this §16.05, Lessee shall promptly execute a termination agreement for the purpose of setting forth the termination date with respect to the Pad or the recaptured portion thereof, and prorating the Minimum Rent and other charges to such date. If Lessor does not elect to recapture as set forth above, Lessee may thereafter enter into a valid assignment or sublease with respect to the Pad, provided that Lessor consents pursuant to this Article 16, and provided, further, that (i) such assignment or sublease instrument is executed within ninety (90) days after Lessor has given Lessor's consent, (ii) Lessee pays all amounts then due to Lessor under this Lease, and (iii) there is not in existence an Event of Default as of the effective date of the assignment or sublease.

§16.06. Whenever Lessor's consent is requested, Lessee shall pay to Lessor the sum of One Thousand and no/100 Dollars (\$1,000.00) for Lessee's reasonable attorneys' fees, accounting fees and other costs incurred by Lessor in connection with the processing and documentation of any such requested Transfer.

## ARTICLE 17

### DEFAULT

§17.01. The following occurrences shall be deemed a material breach and default of this Lease (each an "Event of Default"):

(a) Failure by Lessee to pay any monetary sum due hereunder, including without limitation, Minimum Rent, Percentage Rent, Common Area Expenses or Impositions, when and as the same shall become due and payable, which failure is not cured within five (5) days after written notice thereof from Lessor to Lessee;

(b) Failure by Lessee to observe or perform any other provision, covenant or condition of this Lease to be observed or performed by Lessee, which failure is not cured within thirty (30) days after written notice thereof by Lessor to Lessee, provided that if the nature of such failure is such that it is curable but cannot reasonably be cured within such thirty (30) day period, Lessee shall not be deemed to have committed an Event of Default if it shall commence such cure within such thirty (30) day period after Lessor's notice and thereafter proceed diligently to rectify and cure said failure within ninety (90) additional days;

(c) During the first two (2) years of the Lease Term only, failure by Lessee to conduct its business at the Pad for more than thirty (30) successive days, except in the event of casualty or remodeling or any other noncompliance by Lessee with the operating covenants contained in Article 12 during the first two (2) years of the Lease Term; or

(d) Intentionally Omitted.

(e) The conducting by Lessee of a going out of business sale, bankruptcy sale or any similar liquidation sale in violation of the provisions of this Lease, where such sale continues for twenty four (24) hours after written or oral notice of such violation is delivered by Lessor to Lessee; or

(f) The occurrence of an Event of Default as defined in any other provision of this Lease; or

(g) Intentionally Omitted.

§17.02. Upon the occurrence of an Event of a Default by Lessee, Lessor may, in addition to any other remedies available to it at law or in equity, but subject to the provisions of Article 32, without further notice or demand of any kind to Lessee or any other Person:

(a) Declare the Lease Term ended and reenter the Demised Premises and the Building and the Improvements and take possession thereof and remove all persons therefrom, and Lessee shall have no further claim thereon or hereunder; or

(b) Without declaring this Lease ended, reenter the Demised Premises and the Building and the Improvements and occupy the whole or any part thereof for and on account of Lessee and collect any unpaid rentals and other charges, which have become payable, or which may thereafter become payable; or

(c) Even though Lessor may have reentered the Demised Premises and the Building and the Improvements, thereafter elect to terminate this Lease and all of the rights of Lessee in or to the Demised Premises and the Building and the Improvements.

§17.03. Should Lessor have reentered the Demised Premises and the Building and the Improvements under the provisions of §17.02(b), Lessor shall not be deemed to have terminated this Lease, or the liability of Lessee to pay any Minimum Rent or Percentage Rent or other charges thereafter accruing, or to have terminated Lessee's liability for damages under any of the provisions hereof, by any such reentry or by any action, in unlawful detainer or otherwise, to obtain possession of the Demised Premises, the Building and the Improvements, unless Lessor shall have notified Lessee in writing that it has elected to terminate this Lease.

§17.04. Should Lessor elect to terminate this Lease pursuant to the provisions of subparagraph §17.02(a) or (c) above, Lessor may recover from Lessee as damages, the following:

(a) the worth at the time of award of any unpaid Minimum Rent and other charges which had been earned at the time of such termination; plus

(b) the worth at the time of award of the amount by which the unpaid Minimum Rent and other charges which would have been earned after termination until the time of award exceeds the amount of such rental loss Lessee proves could have been reasonably avoided; plus

(c) the worth at the time of award of the amount by which the unpaid Minimum Rent and other charges for the balance of the term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; plus

(d) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to any costs or expenses incurred by Lessor in (i) retaking possession of the Demised Premises and the Building and the Improvements, including reasonable attorneys' fees therefor, (ii) maintaining or preserving the Demised Premises and the Building and the Improvements after such Event of Default, or (iii) any other costs necessary or appropriate to relet the Demised Premises and the Building and the Improvements; plus.

(e) at Lessor's election, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by the laws of the State where the Pad is situated.

(f) Notwithstanding the provisions of this Article 17 to the contrary, Lessor shall be entitled to proceed with and to obtain, if possible, a complete judgment regarding owed and unpaid rent, damages incurred, rent and other charges owed by Lessee to Lessor subsequent to the termination of this Lease; provided, however, that after obtaining any such judgment, the amount of such judgment allocable to attorneys' fees and other damages incurred by Lessor as a result of Lessee's breach (excluding, however, accelerated rent accruing subsequent to the termination of this Lease) shall be payable by Lessee to Lessor on demand, but as to the portion of such judgment attributable to accelerated rent accruing after the termination of this Lease, Lessee shall only be required to pay such portion of the judgment in equal monthly installments over the shorter of (i) three (3) years, or (ii) what otherwise would have been the remaining term of this Lease, unless Lessee thereafter defaults in any such monetary payments, which default continues after five (5) days written notice, at which time Lessor may execute against the full judgment. This provision shall survive the termination of this Lease.

§17.05. As used in §17.04(a) and (b), the "worth at the time of award" is computed by allowing interest at the Default Rate. As used in §17.04(c), the "worth at the time of award" is computed by discounting such amount at the discount rate of the Federal Reserve Bank situated nearest to the location of the Pad at the time of award plus one percent (1%).

§17.06. For all purposes of this Article, the term "other charges" shall be deemed to be all sums required to be paid by Lessee pursuant to the terms of this Lease including Percentage Rent and additional rent. All such sums, other than the Minimum Rent, shall be computed on the basis of the average monthly amount thereof accruing during the immediately preceding twenty four (24) month period, except that if it becomes necessary to compute such amount before such a twenty four (24) month period has occurred then such amount shall be computed on the basis of the average monthly amount hereof accruing during such shorter period. Notwithstanding the provisions of this Lease to the contrary, if this Lease is rejected in any bankruptcy action or proceeding filed by or against Lessee and the effective date of such rejection is on or after the date on which that month's Minimum Rent and other charges are due and owing, then the Minimum Rent and other charges owing under this Lease for the month during which the effective date of such rejection occurs shall be due and payable in full and shall not be prorated.

§17.07. Upon the occurrence of an Event of Default by Lessee, subject to the provisions of Article 32, Lessor may, at its option permit all of Lessee's fixtures, furniture, equipment, improvements, additions, alterations, and other real and personal property to remain on the Demised Premises or, at its option, at any time during the term of this Lease, to require Lessee to forthwith remove same. In the event of any entry or taking possession of the Demised Premises and the Building and the Improvements as aforesaid, Lessor shall have the right, but not the obligation to remove therefrom all or any part of the personal property located therein and may place the same in storage at a public warehouse at the expense and risk of the Lessee or the owner or owners thereof.

§17.08. In order to secure performance by Lessee of the agreements, covenants and promises to be performed by Lessee as set forth in this Lease, Lessee hereby grants to Lessor a security interest in all of Lessee's fixtures, furniture, equipment, improvements, additions, alterations, inventory and other personal property now or hereafter located within or upon the Pad and any all products and proceeds thereof now owned or hereafter acquired (collectively, the "Collateral"). Upon and after the occurrence of an Event of Default, Lessor shall have all of the rights and remedies of a secured party under the Uniform Commercial Code of the State in which the Shopping Center is situated, including without limitation the right and power to sell or otherwise dispose of the Collateral or any part thereof and for that purpose Lessor may take immediate an exclusive possession of the Collateral or any part thereof and, with or without judicial process, Lessor may enter upon the Demised Premises and remove the Collateral, or, at Lessor's option, Lessee shall assemble the Collateral and make it available to Lessor at the place and time designated by Lessor. To the extent permitted by law, Lessee expressly waives any notice of the sale

or disposition of the Collateral and any other right or remedy of Lessee existing after the occurrence of an Event of Default, and to the extent any notice is required and cannot be waived, Lessee agrees that for the purposes of this §17.08 only, if the notice is marked, postage prepaid to Lessee at the address set forth in Article 19 at least five (5) days before the time of sale or other disposition, the notice shall be deemed commercial reasonable and shall fully satisfy any requirement for the giving of notice. Lessee hereby authorizes Lessor to record and/or file, in the appropriate recording and filing offices, one or more Uniform Commercial Code Financing Statements in the form attached to this Lease as Exhibit "G" (together with amendments and modifications thereto) so as to enable Lessor to perfect the security interest granted in this §17.08. Lessor shall, from time to time, if Lessee shall request, subordinate its security interest to any security interest granted by Lessee. Lessor shall, within fifteen (15) days after Lessee's written request, execute a subordination of landlord's liens in the form attached to this Lease as Exhibit "E".

§17.09. The waiver by Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition contained in this Lease. The subsequent acceptance of amounts due under this Lease by Lessor shall not be deemed to be a waiver of any preceding breach by Lessee of any term, covenant or condition of this Lease, other than the failure of Lessee to pay the particular amount so accepted, regardless of Lessor's knowledge of such preceding breach at the time of acceptance of such rental. The acceptance by Lessor of less than the full amount of Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent or other charges due under this Lease shall not constitute a waiver by Lessor of its right to require that the full amount of Minimum Rent, Percentage Rent, Common Area Expenses, Impositions, additional rent or other charges then due under this Lease be paid in full. No covenant, term, or condition of this Lease (including the provisions of this §17.09) shall be deemed to have been waived by Lessor unless such waiver be in writing signed by Lessor.

§17.10. If Lessee shall fail to pay, when the same is due and payable, any Minimum Rent or Percentage Rent, Common Area Expenses, Impositions, additional rent or any other charges or amounts hereunder, which failure continues for five (5) days after written notice thereof by Lessor to Lessee, such amounts shall bear interest at the Default Rate from the date after the due date until paid.

§17.11. If Lessee shall fail to pay, when the same is due and payable, any Minimum Rent or Percentage Rent, Common Area Expenses, Impositions, additional rent or any other charges or amounts hereunder, which failure continues for five (5) days, Lessee shall pay to Lessor a late payment charge in the amount of five percent (5%) of the payment then due to cover Lessor's additional administrative expenses necessitated by Lessee's failure to make timely payment. Lessor need not accept any payments past the due date therefor unless accompanied by the late payment charge. This provision for a late payment charge shall be in addition to all of Lessor's other rights and remedies under this Lease or at law or in equity, and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner.

§17.12. The remedies given to Lessor in this Article 17 shall be in addition and supplemental to all other rights or remedies which Lessor may have at law, in equity or by statute, and all of such remedies shall be cumulative. In no event, however, shall Lessee be liable for special or consequential damages. The exercise of any one remedy shall not be exclusive of the exercise of additional or further remedies. In the event that any court finds any of the remedies contained in this Article 17 to be unlawful or unenforceable (for instance, a finding that such constitute unenforceable penalties instead of liquidated damages to Lessor), then Lessee agrees and consents to be liable to the maximum extent allowable under law (rather than accepting the total invalidity of the provision in question) and Lessee consents to (and hereby Waives its opposition to) a motion or separate action or demand by Lessor to have such extent clearly and finally determined and assessed against Lessee. During the continuance of an Event of Default (any required notice having been given and any applicable cure period having expired), all privileges and contingencies which may be exercised by Lessee under this Lease including, without limitation, options to renew, extend and expand, as well as relocation rights, contraction rights, exclusive rights or other rights which may be exercised by Lessee during the Lease Term shall be void and of no further force and effect.

§17.13. In the event Lessor shall neglect or fail to perform or observe any of the covenants, provisions or conditions contained in this Lease on Lessor's part to be observed or performed, which failure shall continue for thirty (30) days after written notice of such default is delivered by Lessee to Lessor (or if more than thirty (30) days shall be required because of the nature of the default, if Lessor shall fail to commence the curing of its default within the thirty (30) day period and proceed diligently thereafter), then, in that event, Lessor shall be responsible to Lessee for any and all actual damages sustained by Lessee as a result of Lessor's breach, but not special, consequential or punitive damages. Should Lessee give written notice to Lessor to correct a default, Lessee shall give similar notice to the Mortgagee (provided that Lessor has furnished to Lessee in writing the name and address of the Ground Lessor and the Mortgagee) and prior to any cancellation of this Lease, the Mortgagee shall be given a

reasonable period of time to correct or remedy Lessor's default, although it shall have no obligation to do so. If and when the Mortgagee has made performance on behalf of Lessor, the default of Lessor shall be deemed cured. Lessee shall have no right to terminate this Lease, except as expressly provided elsewhere in this Lease. Notwithstanding any other provision of this Lease, any claim which Lessee may have against Lessor for failure to perform or observe any of the covenants, provisions or conditions contained in this Lease (whether in contract, tort or for breach of any express or implied covenant contained in this Lease) shall be deemed waived unless such claim is asserted by written notice thereof to Lessor within one hundred eighty (180) days of commencement of the alleged default or of occurrence of the cause of action and unless suit be brought thereon within eighteen (18) months subsequent to the occurrence of such cause of action.

#### ARTICLE 18

##### INDEMNITY -- LIABILITY OF LESSOR

§18.01. From and after the Effective Date, to the fullest extent permitted by law, Lessee shall, at Lessee's sole cost and expense, Indemnify Lessor Parties against all Claims arising from (a) any Personal Injury, Bodily Injury or Property Damage whatsoever occurring in or at the Demised Premises; (b) any Bodily Injury to an employee of a Lessee Party arising out of and in the course of employment of the employee and occurring anywhere in the Shopping Center; (c) the use or occupancy, or manner of use or occupancy, or conduct or management of the Demised Premises or of any business therein; (d) subject to the waiver of subrogation provisions of this Lease, any act, error, omission or negligence of any of the Lessee Parties in, on or about the Demised Premises or the Shopping Center; (e) the conduct of Lessee Parties in, at or about the Demised Premises or Shopping Center, including the violation of or failure to comply with, or the alleged violation of or alleged failure to comply with any applicable laws, statutes, ordinances, standards, rules, regulations, orders, or judgments in existence on the date of the Lease or enacted, promulgated or issued after the date of this Lease including Hazardous Materials Laws (defined below); (g) any breach or default by Lessee in the full and prompt payment of any amount due under this Lease, any breach, violation or nonperformance of any term, condition, covenant or other obligation of Lessee under this Lease, or any misrepresentation made by Lessee or any guarantor of Lessee's obligations in connection with this Lease; (h) any liens or encumbrances arising out of any work performed or materials furnished by or for Lessee; (i) commissions or other compensation or charges claimed by any real estate broker or agent other than the Broker(s) specified in the §31.13, with respect to this Lease by, through or, under Lessee or; (j) transfer taxes, brokerage commissions, leasing commissions or increases in Impositions against the Shopping Center resulting from any Transfer of the Demised Premises and/or this Lease by Lessee; or (k) any matter enumerated in §18.02 below. Except for the gross negligence or willful misconduct of any Lessee Party, Landlord hereby indemnifies Lessee Parties against all Claims arising from any Personal Injury, Bodily Injury or Property Damage, which either (i) arise from, or in connection with, any negligence or willful misconduct of any Landlord Party in connection with the Common Areas; or (ii) result from any default, breach, violation or non-performance of this Lease or any provisions of this Lease by Landlord Parties.

§18.02. From and after the Effective Date, to the fullest extent permitted by law, Lessee, on behalf of all Lessee Parties, Waives all Claims against Lessor Parties arising from the following: (a) any Personal Injury, Bodily Injury, or Property Damage occurring in or at the Demised Premises except to the extent resulting from the negligence, recklessness or willful misconduct of Lessor (unless covered by insurance maintained or required to be maintained by Lessee pursuant to the provisions of this Lease); (b) any loss of or damage to property of a Lessee Party located in the Demised Premises or other part of the Shopping Center by theft or otherwise except to the extent resulting from the negligence, recklessness or willful misconduct of Lessor (unless covered by insurance maintained or required to be maintained by Lessee pursuant to the provisions of this Lease); (c) any Personal Injury, Bodily Injury, or Property Damage to any Lessee Party caused by other lessees of the Shopping Center, or the public or by the construction of any private, public, or quasi-public work occurring either in the Demised Premises or elsewhere in the Shopping Center; (d) except as set forth in §12.05 and §12.07 any interruption or stoppage of any utility service or for any damage to persons or property resulting from such stoppage; (e) business interruption or loss of use of the Demised Premises suffered by Lessee; (f) any latent defect in construction of the Building; (g) damages or injuries or interference with Lessee's business, loss of occupancy or quiet enjoyment and any other loss resulting from the exercise by Lessor of any right or the performance by Lessor of Lessor's maintenance or other obligations under this Lease; or (h) any Bodily Injury to an employee of a Lessee Party arising out of and in the course of employment of the employee and occurring anywhere in the Shopping Center except to the extent resulting from the negligence, recklessness or willful misconduct of Lessor (unless covered by insurance maintained or required to be maintained by Lessee pursuant to the provisions of this Lease). To the fullest extent permitted by Law, Lessor, on behalf of all Lessor Parties, Waives all Claims against Lessee Parties arising from the

following: (i) any loss of or damage to property of a Lessor Party located in the Shopping Center (excluding the Demised Premises); or (ii) any Bodily Injury to an employee of a Lessor Party arising out of and in the course of employment of the employee and occurring anywhere in the Shopping Center except for the Demised Premises.

§18.03. For purposes of this Lease: (a) the term "Lessee Parties" means Lessee, Lessee's Representatives, and all Persons claiming through any of these Persons; (b) the term "Lessor Parties" means Lessor, the Mortgagee and their respective Representatives and all Persons claiming through any of these Persons; (c) the term "Indemnify" means indemnify, defend (with counsel reasonably acceptable to the Indemnified Party) and hold free and harmless for, from and against; (d) the term "Claims" means all liabilities, claims, damages (excluding consequential damages), losses, penalties, litigation, demands, causes of action (whether in tort or contract, in law or at equity or otherwise), suits, proceedings, judgments, disbursements, charges, assessments, and expenses (including attorneys' and experts' fees and expenses incurred in investigating, defending, or prosecuting any litigation, claim, or proceeding); (e) the term "Waives" means that the Lessee Parties waive and knowingly and voluntarily assume the risk of; and (f) the terms "Bodily Injury", "Personal Injury" and "Property Damage" will have the same meanings as in the form of commercial general insurance policy issued by Insurance Services Office, Inc. most recently prior to the date of the injury or loss in question.

§18.04. It is the intent of Lessor and Lessee that the indemnities and waivers contained in this Article 18 shall apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any of the Lessor Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on any of the Lessor Parties. The indemnities and waivers contained in this Article 18 shall apply even if a Claim against a Lessor Party was proximately caused by the negligence of that Lessor Party. The indemnities and waivers contained in this Article 18 shall not, however, apply to the extent of the percentage of liability that a final judgment of a court of competent jurisdiction establishes under the comparative negligence principles of the State of Arizona, that a Claim against a Lessor Party was proximately caused by the willful misconduct or gross negligence of that Lessor Party, provided, however, that in such event the indemnity or waiver will remain valid for all other Lessor Parties. It is the intent of Lessee and Lessor that the indemnities and waivers contained in this Article 18 shall apply regardless of the active or passive negligence or sole, joint, concurrent, or comparative negligence of any of the Lessee Parties, and regardless of whether liability without fault or strict liability is imposed or sought to be imposed on any of the Lessee Parties. The indemnities and waivers contained in this Article 18 shall apply even if a Claim against a Lessee Party was proximately caused by the negligence of that Lessee Party. The indemnities and waivers contained in this Article 18 shall not, however, apply to the extent of the percentage of liability that a final judgment of a court of competent jurisdiction establishes under the comparative negligence principles of the State of Arizona, that a Claim against a Lessee Party was proximately caused by the willful misconduct or gross negligence of that Lessee Party, provided, however, that in such event the indemnity or waiver will remain valid for all other Lessee Parties.

§18.05. Intentionally Omitted.

§18.06. The indemnification provided in this Article 18 shall not be construed or interpreted as in any way restricting, limiting or modifying Lessee's insurance or other obligations under this Lease, and the provisions of this Article 18 are independent of Lessee's insurance and other obligations. Lessee's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Lessee's indemnification obligations under this Lease. The indemnification provided in this Article 18 shall not be construed or interpreted as in any way restricting, limiting or modifying Lessor's insurance or other obligations under this Lease, and the provisions of this Article 18 are independent of Lessor's insurance and other obligations. Lessor's compliance with the insurance requirements and other obligations under this Lease does not in any way restrict, limit or modify Lessor's indemnification obligations under this Lease.

§18.07. In addition to the waiver of subrogation contained in §6.02(f) above, Lessor and Lessee each hereby Waive any Claims one may have against the other, and their respective Representatives, on account of any loss or damage occasioned to Lessor or Lessee, as the case may be, or their respective property, the Pad, its contents or to other portions of the Shopping Center, arising from any risk generally covered by "causes of loss - special form" insurance and from any risk covered by any policy of property insurance then in effect (whether or not the party suffering the loss or damage actually carries any insurance, recovers under any insurance or self-insures the loss or damage) or which right of recovery arises from loss of earnings or rents resulting from loss or damage to any such property. In addition, Lessor and Lessee, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any such insurance company may have against Lessor, the Mortgagee, any other lessee of the Shopping Center, or Lessee, and their respective Representatives as the case may be. It is the intent of the parties that the parties shall look solely to their respective insurance company for recovery. The foregoing waivers of subrogation shall be operative only so long as available in the State where the Shopping Center is situated and provided further that no policy of insurance is invalidated thereby.

§18.08. The provisions of this Article 18 will survive the expiration or earlier termination of this Lease until all Claims against Lessor Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations. The provisions of this Article 18 will survive the expiration or earlier termination of this Lease until all Claims against Lessee Parties involving any of the indemnified or waived matters are fully and finally barred by the applicable statutes of limitations.

§18.09. Notwithstanding anything to the contrary contained in this Lease, it is expressly understood and agreed that any money judgment against Lessor resulting from any default or other claim arising under this Lease (whether in contract, tort or for breach of any express or implied covenant contained in this Lease) shall be satisfied only out of the rents, issues, profits and other income (collectively "income") actually received from the operation of the Shopping Center, and no other real, personal or mixed property of Lessor or its Representatives (the term "Lessor" for purposes of this §18.09 only shall mean any and all members and any and all partners, both general and/or limited, if any, which comprise Lessor), wherever situated, shall be subject to levy on any judgment obtained against Lessor and if such income is insufficient for the payment of such judgment, Lessee shall not institute any further action, suit, claim or demand, in law or in equity, against Lessor for or on the account of such deficiency. Lessee hereby waives, to the fullest extent permitted by law, any right to satisfy a money judgment against Lessor except from income received by Lessor from the operation of the Shopping Center.

## ARTICLE 19

### NOTICES

§19.01. All notices, demands or requests by Lessor to Lessee shall be in writing and shall be served or given only by personal delivery, overnight courier or United States registered or certified mail, return receipt requested, postage prepaid, addressed to Lessee, at:

Garden Fresh Restaurant Corp.  
15822 Bernardo Center Drive, Suite A  
San Diego, California 92127  
Attention: Legal Department

All notices, demands or requests by Lessee to Lessor shall be in writing and shall be served or given only by personal delivery, overnight courier or United States registered or certified Mail, return receipt requested, postage prepaid, addressed to Lessor, at:

Power & Ray, LLC  
c/o Vestar Development Co.  
2425 East Camelback Road, Suite 750  
Phoenix, Arizona 85016  
Attention: President

with a copy sent to:

Mariscal, Weeks, McIntyre & Friedlander  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012  
Attention: David L. Lansky, Esq.

§19.02. Either party may change such address by written notice in the manner specified above for the giving of notices to the other; provided, however, neither party may designate a foreign address or an address for delivery of notices which does not indicate a street address (i.e., building name or number and street identification), city, state and zip code. Notice shall be deemed received as of the date such notice is (i) delivered to the party intended to receive such notice, (ii) delivered to the then designated address of the party to receive such notice, (iii) rejected or other refusal to accept at the then designated address of the party to receive such notice, (iv) undeliverable because of a changed address of which no notice was given, or (v) five (5) business days following deposit in the United States mail, if served by certified or registered mail, return receipt requested. Notices by a party may be given by the legal counsel to such party and/or an authorized agent of such party. In this regard, any notice to be given by or on behalf of Lessor under this Lease shall be effective if given by Lessor's legal counsel and/or Lessor's property manager. In no event shall notices be transmitted by facsimile or electronic mail.

## ARTICLE 20

### QUIET ENJOYMENT--CONVEYANCE AND MORTGAGES BY LESSOR -- SUBORDINATION AND ATTORNMENT

§20.01. Lessee upon timely paying the Minimum Rent, Percentage Rent, additional rent and other charges set forth in this Lease and fully keeping, observing and performing all the terms, covenants, agreements, provisions, conditions and limitations of this Lease on Lessee's part to be kept, observed and performed, shall quietly have and enjoy the Demised Premises during the Lease Term without hindrance or molestation by Lessor or by those claiming by, through or under Lessor subject, however, to the matters referred to in §§20.03, 20.04 and 20.05. The provisions of this §20.01 shall not extend to any disturbance, act or omission brought about by any other Person, including a tenant of other premises in the Shopping Center.

§20.02. In the event Lessor or any successor owner of the Demised Premises shall convey or otherwise dispose of the Demised Premises, then, upon the transfer of any insurance policies, and other monies or any other securities belonging to Lessee held by Lessor pursuant to the provisions of this Lease, to any such purchaser of the Demised Premises, all liabilities and obligations on the part of Lessor or successor owner as Lessor under this Lease, accruing after such conveyance or disposal, shall cease and terminate and each successor purchaser of the Demised Premises shall, without further agreement, be bound by Lessor's covenants and obligations but only during the period of such ownership respectively. Nothing herein contained shall be construed to release Lessor or any successor owner as Lessor from any liability or obligation which otherwise matured prior to the effective date of such conveyance or disposal.

§20.03. Subject to the further provisions of this Lease, this Lease is and shall be subject and subordinate to (i) all Mortgages which now or in the future may affect the Demised Premises or any portion thereof (provided, however, that Lessee's obligation to subordinate this Lease to any future Mortgage is conditioned upon the execution and delivery of a Subordination, Attornment and Non-Disturbance Agreement substantially in the form attached to this Lease as Exhibit "K"; provided, however, as between this Lease and the Mortgage, with respect to the disposition of insurance proceeds and condemnation proceeds, the provisions of this Lease shall prevail), (ii) the Declarations and to all renewals, additions, modifications, consolidations, replacements and extensions of any of the foregoing. Lessee covenants and agrees, within twenty (20) days after Lessor's written request, without charge therefor, to execute, acknowledge and deliver any and all documents or instruments requested by Lessor as necessary or proper to assure the subordination of this Lease to Mortgages, the Declarations or any renewal, addition, modification, consolidation, replacement or extension of any of the foregoing. If Lessee shall fail to execute the instruments requested pursuant to this §20.03 within the twenty (20) day time period set forth in this §20.03, which failure continues for ten (10) days following written notice thereof by Lessor to Lessee, Lessee shall have committed an Event of Default and in addition to the other remedies available to Lessor under this Lease, Lessee shall be assessed a service charge in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) payable when the next installment of Minimum Rent is due.

§20.04. Notwithstanding anything to the contrary set forth herein, Lessee hereby attorns and agrees to attorn to any Person purchasing or otherwise acquiring the Shopping Center, the Demised Premises or the real property thereunder or any portion thereof at any sale or other proceeding or pursuant to the exercise of any rights, powers or remedies under a Mortgage as if such Person had been named as Lessor herein. Lessor and Lessee acknowledge and agree that the Mortgagee shall have no obligation or liability whatsoever to Lessee with respect to this Lease or otherwise unless and until Mortgagee acquires title to the Shopping Center.

§20.05. Lessee acknowledges that the Demised Premises is a portion of the Shopping Center and is subject to the Declarations and the Development Agreement. Lessee agrees that (i) as to its leasehold estate it, and all Persons in possession or holding under it, will conform to and will not violate the terms of any matters now or hereafter of record, (ii) this Lease is and shall remain subordinate to the Declarations and any amendments or modifications thereto, and (iii) subject to any limitations set forth in the Declarations, permittees of the remainder of the Shopping Center shall have parking, ingress and egress easements over the Demised Premises and the permittees of the Demised Premises shall have parking, ingress and egress easements over the remainder of the Shopping Center.

§20.06. Concurrently with the execution of this Lease, Lessee, Lessor and Lessor's lenders shall execute, acknowledge and deliver, a Subordination, Non-disturbance and Attornment Agreement in the form attached to this lease as Exhibit "K". Lessor has disclosed to Lessee that Lessor's lender requires a processing charge in the amount of One Thousand and No/100 Dollars (\$1,000.00) in order to execute the Subordination, Non-Disturbance and Attornment Agreement in the form attached to this Lease as Exhibit "K". Lessee shall be solely responsible for the payment of the processing fee charged by Lessor's lender as a condition to the execution of the Subordination, Non-Disturbance and Attornment Agreement.

## ARTICLE 21

### CERTIFICATES BY LESSOR AND LESSEE

§21.01. Both Lessor and Lessee agree at any time and from time to time, without charge, upon not less than twenty (20) days' prior written notice by the other party, without charge, to execute, acknowledge and deliver to the other party or to the Mortgagee a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (b) the dates to which the Minimum Rent, Percentage Rent, Common Area Expenses, Impositions and additional rent have been paid, (c) whether or not the other party is in default in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease and, if in default, specifying each such default, and (d) such other information as may be reasonably requested and is factually correct, it being intended that any such statement delivered pursuant to this §21.01 may be relied upon by the other party or any prospective purchaser. If Lessee shall fail to execute the statement requested pursuant to this §21.01 within the twenty (20) day time period set forth in this §20.03, which failure continues for ten (10) days following written notice thereof by Lessor to Lessee, Lessee shall have committed an Event of Default.

§21.02. If the Mortgagee shall so require, Lessee shall, upon not less than thirty (30) days prior written notice from Lessor, without charge, execute, acknowledge and deliver to Lessor a Lessee Estoppel Certificate in the form attached to this Lease as Exhibit "F", it being intended that such Lessee Estoppel Certificate may be relied upon by Lessor, the Mortgagee and/or any assignee of any Mortgagee.

§21.03. Lessee's failure to deliver any such statement within such time, which failure continues for ten (10) days after written notice thereof by Lessor to Lessee, shall constitute an Event of Default.

## ARTICLE 22

### COVENANTS TO RUN WITH THE LAND

§22.01. The terms, covenants, agreements, provisions, conditions and limitations contained in this Lease shall be construed as covenants running with the land and shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its permitted successors and assigns, if any, except as otherwise provided herein.

## ARTICLE 23

### NON-MERGER OF ESTATES

§23.01. The estate of Lessor and the leasehold estate of Lessee shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Lease or the leasehold estate created hereby, or any interest in either thereof, may be held directly or indirectly by or for the account of any Person who shall own the fee or leasehold estate in the Demised Premises, and Lessee's interest in the Lease. No such merger of estates shall occur by operation of law, or otherwise, unless and until all Persons at the time having any interest in the fee or leasehold estate in the Demised Premises and all Persons having any interest in the Lease or the leasehold estate shall join in the execution of a written instrument effecting such merger of estates.

## ARTICLE 24

### APPROVAL

§24.01. Whenever under this Lease provision is made for Lessor or Lessee to secure the consent or approval of the other, unless otherwise expressly provided to the contrary in connection with such provision, such consent or approval shall be in writing and shall not be unreasonably withheld, conditioned or delayed. In the event any matter or any course of action which Lessee proposes to take under this Lease would require the approval of a party to the Declarations if Lessor proposed a similar matter or proposed to take a similar course of action under the Declarations or the approval of the Town if Lessor proposed a similar matter or proposed to take a similar course of action under the Development Agreement, as the case may be, if a party to the Declarations or the Town, as the case may be, withholds its approval of such proposed matter or course of action, any withholding of approval by Lessor with respect to the matter or Lessee's proposed course of action shall conclusively be deemed reasonable.

## ARTICLE 25

### MEMORANDUM OF LEASE

§25.01. This Lease shall not be recorded, but if Lessor or Lessee shall so request, a memorandum of this Lease in the form attached to this Lease as Exhibit "D" shall be executed, acknowledged and delivered by the parties, which Memorandum of Lease shall be recorded by Lessor at Lessee's sole cost and expense following the satisfaction or waiver by Lessee of the contingencies and conditions precedent set forth in this Lease.

#### ARTICLE 26

##### CONSTRUCTION AND REIMBURSEMENT OBLIGATIONS; ARCHITECTURAL AND PLAN APPROVAL

§26.01. Lessor and Lessee acknowledge and agree that Lessor has no obligation with respect to the performance or installation of additional On-Site Improvements and/or Off-Site Improvements for the Shopping Center or the Demised Premises. Lessee may, during the Feasibility Period, examine the physical condition of the Demised Premises, as well as the capacities and locations of utility service to the Demised Premises. Lessee hereby acknowledges receipt of the plans and specifications for the On-Site Improvements and Off-Site Improvements constructed to date by Lessor, which plans and specifications are more particularly described on Exhibit "J". Lessee shall be solely responsible for the performance of any work necessary to ready the Demised Premises for the construction by Lessee of its Building and Improvements. Lessee shall, not later than five (5) days after the Rental Commencement Date, pay to Lessor the sum of One Hundred Ten Thousand and No/100 Dollars (\$110,000.00) in full payment of its share of the Onsite Costs and Offsite Costs.

§26.02. Lessee shall promptly make application to the appropriate utility providers in order to arrange for the establishment of utility services at the Demised Premises and the installation of any necessary meters. Any meters necessary to separately meter any utilities supplied to the Demised Premises and any hook-up or tap-in fees for any such utilities shall be paid for in full by Lessee. Lessee shall be solely responsible for all costs and expenses connected with the issuance of a building permit for the proposed Building and Improvements to be constructed on the Demised Premises.

§26.03. Prior to Lessee commencing construction of the Building or Improvements on the Demised Premises, Lessee shall have received the written approval of Lessor to all aspects of its proposed Building and Improvements. Lessor's approval shall be based upon its determination, in its sole and absolute discretion, that the Building and Improvements to be constructed are architecturally and aesthetically harmonious with the balance of the Shopping Center. Lessee agrees that the Building on the Demised Premises shall contain not more than eight thousand (8,000) square feet of Floor Area (excluding patio area and dock area). Lessee further agrees that the Building on the Demised Premises shall not exceed twenty six (26) feet in height (including architectural treatments). At least thirty (30) days prior to commencing construction, Lessee shall have submitted to Lessor, on electronic media (together with a hard copy), a site plan and a four-sided color elevation and a color and materials board for the proposed Building and Improvements showing in detail the dimensions, ingress, egress, grading, drainage, site and building signage, site and building lighting, parking, color elevation, hardscape and landscaping. At all times prior to construction, Lessee shall maintain the Demised Premises in a clean condition, free of dust, vermin and debris and shall keep all grass and landscaping properly mowed and irrigated. Lessee shall cause its Building and Improvements to be completed and Lessee shall open for business to the general public, under the Trade Name fully stocked, staffed and fixtured in the entire Building, no later than three hundred sixty five (365) days after the Rental Commencement Date.


§26.04. Prior to Lessee commencing construction of any Building or Improvements on the Demised Premises, Lessee shall submit to Lessor for approval, comprehensive plans and specifications for the proposed Building or Improvements. Lessor's approval shall be based upon its determination, in its sole and absolute discretion, that the Building and Improvements to be constructed are architecturally and aesthetically harmonious with the balance of the Shopping Center. Lessor will approve or disapprove items submitted by Lessee to Lessor for approval within fifteen (15) days after receipt thereof. Lessee acknowledges that Lessor does not assume any responsibility whatsoever for the detailed design of any structure or structures, or for any violation of any applicable laws, ordinances or regulations. Lessee shall not make any change in the plans or specifications after having received the approval of Lessor without obtaining from Lessor approval of such change. Any Building or Improvements constructed on the Demised Premises shall be constructed in a good and workmanlike manner, in conformance with plans and specifications approved by Lessor and in compliance with applicable Governmental Restrictions. All parts of any Building exposed to perimeter properties shall present a pleasant appearance and all service areas shall be screened from public view.

§26.05. Prior to Lessee commencing construction of any Building or Improvements on the Demised Premises, Lessee shall give Lessor ten (10) days prior written notice of its intent to commence such construction in order that nonresponsibility notices may be posted and recorded as may be provided by applicable law.

12:55:20 PM, Dec 7, 2001

**§26.06. Intentionally Omitted.**

§26.07. If Lessee shall fail to commence construction of its Building and Improvements on the Demised Premises within the time frame set forth in §26.03 above (for the purposes of this §26.07 only, commencement of construction shall mean the pouring of footings and foundation) or if Lessee shall fail to diligently prosecute construction of its Building and Improvements to completion, Lessor may, if it so elects, terminate this Lease by delivering written notice of termination to Lessee, which termination shall be effective thirty (30) days after delivery by Lessor to Lessee of such notice of termination, unless prior to the expiration of such thirty (30) day period, Lessee commences construction of its Building and Improvements on the Demised Premises or resumes diligently prosecuting such construction to completion. Lessor and Lessee acknowledge and agree that the Shopping Center is interdependent enterprise and that a material consideration to the execution of this Lease by Lessor is the agreement by Lessee to open for business, fully stocked, staffed and fixtured in the entire Building, not later than the date set forth in §26.03 above. **ACCORDINGLY, IF LESSEE DOES NOT OPEN FOR BUSINESS PRIOR TO THE DATE SET FORTH IN §26.03 ABOVE, AS LIQUIDATED DAMAGES TO LESSOR, MINIMUM RENT SHALL BE PAYABLE AT TWO (2) TIMES THE RATE SET FORTH IN ARTICLE 1, UNTIL SUCH TIME AS LESSEE OPENS FOR BUSINESS. IN THE EVENT LESSEE FAILS TO OPEN FOR BUSINESS FULLY STOCKED, STAFFED, AND FIXTURED PRIOR TO THE DATE SET FORTH IN §26.03 ABOVE, LESSOR AND LESSEE AGREE THAT GIVEN THE INDUCEMENT AND CO-TENANCY PROVISIONS THAT MAY BE CONTAINED IN OTHER LEASES WITHIN THE SHOPPING CENTER AND THE NEGATIVE IMPACT ON LESSOR'S ABILITY TO FINANCE, LEASE AND MARKET THE SHOPPING CENTER RESULTING FROM VACANT SPACE WITHIN THE SHOPPING CENTER, IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE ACTUAL DAMAGES TO BE SUFFERED BY LESSOR AS A RESULT OF LESSEE'S FAILURE TO TIMELY OPEN FOR BUSINESS WITHIN THE DEMISED PREMISES AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE OF THIS LEASE, THE LIQUIDATED DAMAGES PROVIDED FOR IN THE IMMEDIATELY PROCEEDING SENTENCE REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH LESSOR WOULD INCUR AS A RESULT OF LESSEE'S FAILURE TO TIMELY OPEN FOR BUSINESS. THEREFORE, LESSOR AND LESSEE AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT LESSOR WOULD SUFFER IN THE EVENT LESSEE FAILS TO TIMELY OPEN FOR BUSINESS IN THE DEMISED PREMISES IS AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION. SUCH AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH BY LESSEE OF ITS AGREEMENT TO TIMELY OPEN FOR BUSINESS WITHIN THE DEMISED PREMISES. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY, BUT IS INTENDED TO CONSTITUTE REASONABLE LIQUIDATED DAMAGES TO LESSOR.**

  
Lessor's Initials

  
Lessee's Initials

§26.08. Any construction, repairs, replacements or maintenance performed or caused or permitted to be performed by Lessee to the Pad shall be subject to the following additional provisions:

- (a) Such construction, repairs, replacements or maintenance shall be performed in a manner designed to avoid unreasonable interference with the conduct of business operations by other lessees of the Shopping Center or with any construction being performed by such lessees;
- (b) No debris shall be placed in the Common Areas of the Shopping Center, except such portion of the Common Areas which also serves as the "Staging Area" for such construction, with the location of the Staging Area being designated as such on the Site Plan;
- (c) Lessee shall use reasonable efforts to avoid the settling of or dispersion of dust into the Common Areas of the Shopping Center or into the premises demised to other tenants of the Shopping Center;
- (d) All construction equipment and material shall be located so as to avoid unreasonable interference with the conduct of business operation by other tenants of the Shopping Center or with any construction being performed by such tenants;
- (e) Lessee shall, at its sole cost and expense erect a temporary security fence (together with screening reasonably acceptable to Lessor) surrounding the construction areas during the periods of construction and shall, at its sole cost and expense, comply with all applicable Governmental Restrictions;

(f) Lessee shall repair any damage to the Shopping Center or other property of Lessor caused by Lessee's construction work;

(g) Access to and from the Shopping Center for construction vehicles shall be only from the location designated "Construction Entrance" on the Site Plan; and

(h) Lessee shall comply with the Special Construction Provisions attached to this Lease as Exhibit "H".

§26.09. Lessee represents and warrants to Lessor that the Building and Improvements to be constructed on the Demised Premises, and all other construction thereon, when undertaken, while in progress and as completed: (a) will comply with all Governmental Restrictions; (b) will be entirely on the Demised Premises and will not encroach upon the land of others or any easement or right of way; (c) will be wholly within any enforceable building restriction lines, however established; (d) will not violate any enforceable use restriction or any applicable easement, license, covenant, condition or other restriction of record, including the Declarations; and (e) will comply in all material respects with the items submitted to and approved by Lessor. Within thirty (30) days after final completion of the Building and/or Improvements, and within thirty (30) days after completion of any alterations to the Building and/or Improvements, Lessee shall deliver to Lessor, at no cost or expense to Lessor, a letter to Lessor from Lessee affirming to Lessor and to the Mortgagee the representations and warranties contained in this §26.09.

§26.10. Intentionally Omitted.

§26.11. Prior to Lessee commencing construction of the Building or Improvements on the Demised Premises, Lessee shall procure and maintain in full force and effect until completion and acceptance of the Building and Improvements (a) "causes of loss-special form" builders risk insurance, including coverage for vandalism and malicious mischief, in a form and an amount and with a company or companies reasonably acceptable to Lessor, (b) workers' compensation insurance covering all Persons employed in connection with work to be performed at the Demised Premises and with respect to whom death or bodily injury claims could be asserted against Lessor or the Demised Premises, and (c) a certificate of commercial general liability insurance satisfying the requirements of §6.02(a) above. The policy of builders risk insurance shall cover Improvements in place and all material and equipment at the job site furnished under contract, but may exclude contractors', subcontractors' and construction manager's tools and equipment and property owned by contractors' or subcontractors' employees.

§26.12. Lessee hereby grants to Lessor and its Representatives (including, the Mortgagee), the right (but not the obligation) during business hours, upon not less than twenty-four (24) hours oral or written notice to Lessee (except in the case of an emergency, in which event no notice shall be required) to enter upon the Demised Premises for the purposes of inspecting Lessee's construction activities, provided that such inspections shall not unreasonably interfere with Lessee's construction activities. If any work or materials are not in conformity with items submitted to and approved by Lessor pursuant to this Lease, any Governmental Restrictions, or any other provisions of this Lease, Lessor shall have the right (but not the obligation), upon five (5) business days notice to Lessee, stop the work and order correction of any such work or materials. Inspection by Lessor of the Demised Premises or any Building or Improvements thereon is for the sole purpose of protecting the rights of Lessor and, is not to be construed as an acknowledgement, acceptance or representation by Lessor that there has been compliance with any plans and specifications, or any terms or provisions of this Lease or that the Demised Premises or any Building or Improvements thereon will be free of faulty materials or workmanship.

§26.13. Within one hundred twenty (120) days after final completion of the Building and/or Improvements, and within one hundred twenty (120) days after completion of any alterations to the Building and/or Improvements, Lessee shall deliver to Lessor, at no cost or expense to Lessor, one (1) set of "as built" plans for the Building and Improvements on electronic media furnished represents the true "as built" plans for the Building and/or Improvements.

ARTICLE 27

TITLE TO IMPROVEMENTS

§27.01. The Building or Improvements of any nature including, but not limited to fixtures, equipment and other materials or items that may be placed upon, installed in or attached to the Demised Premises by Lessee shall, for all purposes, be the property of and assets of Lessee. Lessee shall be solely entitled to any rights or benefits associated with its ownership of the Building or Improvements, including, but not limited to, any depreciation, tax credits or other tax benefits. Notwithstanding the foregoing, the Building and Improvements, excluding Removable Personal Property and trade fixtures on

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the Demised Premises, shall, at the option of Lessor, remain on the Demised Premises after the termination of this Lease and shall thereupon become the property of Lessor.

## ARTICLE 28

### COMMON AREAS OPERATION AND MAINTENANCE

§28.01. Pursuant to the Declarations, Lessor shall maintain or cause to be maintained the Common Areas of the Shopping Center in good and clean condition and repair, until such maintenance is otherwise provided for in accordance with the Declarations. Such maintenance of the Common Areas of the Shopping Center shall be conducted as set forth and provided in the Declarations.

§28.02. Lessor shall have (and is hereby granted) the full right and authority of operation, control and maintenance of the entire Common Areas, such authority to also include the right to enact reasonable nondiscriminatory rules for the use and operation of the Common Areas including employee parking rules. Lessee and Lessee's employees and invitees are, except as otherwise specifically provided in this Lease, authorized, empowered and privileged to use the Common Areas in common with other Persons during the Lease Term, except those portions of the Common Areas on which have been constructed or placed permanent or temporary kiosks, displays, carts and stands and except for those portions of the Common Areas used in the maintenance or operation of the Shopping Center.

§28.03. The "Common Area Expenses" incurred by Lessor shall be apportioned among the various occupants of the Shopping Center, and Lessee shall pay to Lessor a share of such Common Area Expenses determined in the manner set forth in §28.04. "Common Area Expenses" shall include, but not be limited to, all sums expended in connection with the Common Areas for all general maintenance, repairs, replacements, resurfacing or restriping, cleaning, and snow and ice removal; commercially reasonable periodic up-grading of the Common Areas and the mechanical, electrical, plumbing, computer and other systems serving the Common Areas; sweeping and janitorial maintenance and supplies (including painting); maintenance and repair of vertical transportation systems, sidewalks, curbs, gutters, Shopping Center directories and signs and other components of the Common Areas; maintenance and repair of parking areas, sprinkler systems, public restrooms, grease traps, interceptors and lines, planting and landscaping; painting the exteriors of the buildings in the Shopping Center; lighting, telecommunication, and other utilities, including without limitation all domestic and fire water, electricity, gas, fiber optic, internet, cable tv, steam, chilled water, fire and sanitary and storm sewer systems, back-flow preventers and lines, and any and all usage, service, hook-up, connection, availability and/or standby fees, deposits or charges pertaining to same, and maintenance or replacement of pipes, cables, lines and underlying easements if not maintained or replaced by utility companies; installing and maintaining art work and holiday decorations; directional signs and other markers and bumpers; maintenance and repair of any fire protection systems, lighting systems, storm drainage systems and other utility systems; personnel, including professional services, to implement such services; labor costs and service contracts; removing rubbish and trash including from adjacent sidewalks and street curbs and maintaining refuse receptacles and recycling facilities; security services, including, if Lessor deems necessary, the cost of security guards; costs and expenses of labor including, payroll taxes, unemployment insurance, uniforms, overtime, fringe benefits (including pension, medical, dental and retirement plans), workers' compensation and employer's liability insurance premiums for all on-site personnel rendering services to the Shopping Center and, on a pro rata basis, off-site personnel who engage in significant activity at the Shopping Center (but specifically excluding all such costs for Lessor's personnel operating at Lessor's administrative offices performing an administrative function); promotional materials, on and off site billboards and audio, visual and computer based promotional production services which may be used after the Grand Opening of the Shopping Center; Impositions or an amount equivalent thereto if such Impositions are abated in whole or in part, including any assessments on the improvements and land comprising the Common Areas, including fees assessed by air quality management districts or any governmental or quasi-governmental entity regulating air or water pollution (but not assessments in connection with a refinancing of the Shopping Center); assessments against the Shopping Center under the Declarations (but not assessments in connection with a refinancing of the Shopping Center); any governmental imposition or surcharge imposed upon Lessor or assessed against any portion of the Common Areas; all costs and expenses pertaining to a security alarm system for the lessees in the Shopping Center; costs of valet parking and shuttle services if offered to Lessee; depreciation on maintenance and operating machinery and equipment (if owned) and rental paid for such machinery and equipment (if rented); all insurance premiums for insurance coverage maintained by the Lessor and described in this Lease, including any coverage which may be required by Lessor's lender(s), including, without limitation: (a) commercial general liability, (b) property damage, (c) any perils generally included within the classification "special form", including but not limited to risks covered by fire and extended coverage, construction, flood, earthquake, vandalism and malicious mischief, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation) as such replacement cost shall be determined from time to time; and (d) fidelity, personal injury and bodily injury; legal, accounting, consulting and other professional fees incurred in connection with the ownership and operation of the

Common Areas; rental payments for any parking structures or for leased portions of the parking lot and other expenses for off-site parking in the event that Lessor, in its reasonable business judgment determines that such off-site parking is necessary; and on-site management and/or security offices; telephone and stationary costs; license fees; transport taxes, fees or assessments, including costs associated with a transportation management program (but not assessments in connection with a refinancing of the Shopping Center); and sales, use and business property taxes. In addition, the Common Area Expenses shall include a sum to be payable to Lessor for accounting, bookkeeping and collection of the Common Area Expenses in an amount equal to ten percent (10%) of the other Common Area Expenses payable by Lessee pursuant to this \$28.03, for each calendar year (exclusive of Impositions and insurance premiums). Lessor may cause any or all of these services to be provided by an independent contractor or contractors or by an Affiliate of Lessor. Notwithstanding anything in this Lease to the contrary, Common Area Expenses shall not include:

(a) leasing commissions, attorneys' fees, and other costs and expenses incurred in connection with negotiations or disputes with present or prospective tenants of the Shopping Center;

(b) costs, including permit, license and inspection costs, incurred with respect to the installation of tenant improvements made for other tenants in the Shopping Center or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants of the Shopping Center;

(c) costs incurred by Lessor with respect to goods and services (including utilities sold and supplied to tenants of the Shopping Center) to the extent that Lessor is entitled to reimbursement for such costs (other than in the nature of Common Area Expense charges);

(d) depreciation on Lessor's original investment in the Shopping Center;

(e) costs of a capital nature, including, without limitation, capital improvements, capital repairs, capital equipment and capital tools, to the extent not amortized over the reasonably anticipated useful life of the alteration;

(f) all items and services for which Lessee or any other tenant in the Shopping Center reimburses Lessor or which Lessor provides selectively to one or more tenants (other than Lessee) without reimbursement;

(g) costs incurred by Lessor due to the violation by Lessor or any tenants of the terms and conditions of any lease of space in the Shopping Center or any violation by Lessor of the terms of any ground lease or mortgage for the Shopping Center;

(h) amounts paid to persons or entities affiliated with Lessor in excess of the fair market value of such services or materials provided in exchange therefor;

(i) interest on and amortization of debt;

(j) any compensation paid to clerks, attendants or other persons in commercial concessions operated by Lessor;

(k) rentals and other related expenses incurred in leasing air conditioning systems, elevators or other equipment ordinarily considered to be of a capital nature, except equipment not affixed to the Shopping Center which is used in providing janitorial or similar services;

(l) advertising or promotional expenditures;

(m) the cost of repair or other work (including rebuilding) occasioned by fire, wind storm or other casualty or condemnation;

(n) any costs, fines or penalties due to Lessor's violation of any governmental rule or authority;

(o) all costs and expenses associated with the removal and cleanup of "Hazardous Materials" (as defined in Section 9.05) caused directly and exclusively by Lessor;

(p) the cost to correct any part of the Common Areas that was inadequately designed or defectively constructed; and

(q) costs of acquiring sculptures, paintings or other objects of art installed in, on or about the Shopping Center, provided, however, this exclusion is not intended to extend to fountains or to the maintenance, repair and insurance of art work located within the Shopping Center.

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§28.04. Common Area Expenses shall be prorated in the following manner:

(a) From and after the Rent Commencement Date, Lessee shall pay to Lessor, on the first day of each calendar month, an amount estimated by Lessor to be Lessee's share of the Common Area Expenses. This estimated monthly charge may be adjusted by Lessor at the end of any calendar quarter on the basis of Lessor's experience and any variation in reasonably anticipated costs.

(b) Within ninety (90) days after the end of each calendar year, Lessor shall furnish Lessee a detailed statement covering the calendar year just expired, certified as correct by a certified public accountant or an authorized representative of Lessor, showing the total of the Common Area Expenses, the amount of Lessee's share of the Common Area Expenses for such calendar year and the payments made by Lessee with respect to such period as set forth in subparagraph (a) above. If Lessee shall so request, Lessor shall provide to Lessee reasonable back-up documentation for any expenses identified in Lessor's detailed statement. If Lessee's share of the Common Area Expenses exceeds Lessee's payments, Lessee shall pay Lessor the deficiency within thirty (30) days after receipt of such statement. If Lessee's payments exceed Lessee's share of the Common Area Expenses, Lessee shall be entitled to offset the excess against payments next thereafter to become due Lessor as set forth in subparagraph (a) above. Lessee's share of the Common Area Expenses for the previous calendar quarter or year shall be that portion of all Common Area Expenses, the numerator of which is the land area of the Demised Premises and the denominator of which is the land area of the Shopping Center, excluding, however, the land area of parcels, the owners, lessees or occupants of which self-maintain with respect to any particular component of Common Area Expenses. There shall be an appropriate adjustment of Lessee's share of the Common Area Expenses as of the Commencement Date and at the expiration or earlier termination of Lease Term.

(c) In the event Lessee's share of Common Area Expenses increased by more than four percent (4%) of Lessee's share of Common Area Expenses for the prior year of the Lease Term, Lessee, at its expense, shall have the right, upon fifteen (15) days prior written notice to Lessor (an "Audit Notice"), to audit Lessor's books and records relating to such statement for such immediately preceding calendar year with respect to any specific charge or charges disputed in writing by Lessee, subject to the further terms and provisions of this §28.04(c): (a) Lessee must provide the Audit Notice to Lessor within one (1) year after Lessee receives Lessor's annual reconciliation statement with respect to Common Area Expenses, Lessor and Lessee acknowledging and agreeing that Lessee's failure to deliver an Audit Notice within such one (1) year period shall constitute Lessee's approval of such annual reconciliation statement and shall render such annual reconciliation statement an "account stated" between Lessor and Lessee, (b) no audit shall be conducted during the month of December or at any time that Lessee is in breach or default of any of the terms, covenants or provisions of this Lease; (c) any audit shall be conducted only by qualified employees of Lessee or by independent certified public accountants employed by Lessee on an hourly or fixed fee basis, and not on a contingency fee basis; and (d) Lessee shall not audit Lessor's books and records more than one (1) time for any calendar year. Lessee acknowledges that Lessee's right to inspect Lessor's books and records with respect to Common Area Expenses for the preceding calendar year is for the exclusive purpose of determining whether Lessee has paid the correct amount for Common Area Expenses and if it is determined in accordance with the provisions of this §28.04(c) that Lessee has paid on account of Common Area Expenses an amount in excess of the Common Area Expenses properly due and payable, Lessor shall not be deemed to be in breach or default of this Lease, but rather, Lessor shall promptly refund to Lessee the amount of any such overpayment. Lessee shall have ninety (90) days after Lessee's Audit Notice to complete Lessee's inspection of Lessor's books and records concerning Common Area Expenses at Lessor's accounting office. During its inspection, Lessee agrees to request, in writing, all pertinent documents relating to the inspection. If in Lessor's possession, Lessor will provide such documents to Lessee within ten (10) days after Lessor's receipt of Lessee's request and Lessee shall not remove such records from Lessor's accounting office, but Lessee shall have the right to make copies of the relevant documents at Lessee's sole cost and expense. Lessee shall deliver to Lessor a copy of the results of such audit within fifteen (15) days after receipt by Lessee. The nature and content of any audit are strictly confidential. Lessee, for itself and on behalf of its Representatives, shall not disclose the information obtained from the audit to any other Person including, without limitation, any other tenant in the Shopping Center or any Representative of any such tenant in the Shopping Center. No Transferee shall conduct an audit for any period during which such Transferee was not in possession of the Demised Premises or for any period that Lessor was not the owner of the Shopping Center. If as a result of its audit, Lessee determines that the actual Common Area Expenses for the period covered by any statement are less than the amount shown on such statement, Lessee shall promptly notify Lessor of such determination, which notice shall be accompanied by a copy of the results of Lessee's audit. Upon receipt of such notice and accompanying information, Lessor may object to Lessee's determination by providing Lessee

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## ARTICLE 29

### RUBBISH REMOVAL

§29.01. Lessee shall keep the Pad clean, both inside and outside, at its sole cost and expense and shall remove the ashes, garbage, excelsior, straw, and other refuse from the Pad. Lessee shall not burn any materials or rubbish of any description upon the Pad. Lessee shall keep all accumulated rubbish in covered containers and shall have same removed regularly, and shall store the same in those areas of the Shopping Center designated by Lessor from time to time for the storage of rubbish awaiting collection. In the event Lessee fails to keep the Pad in the proper condition, Lessor may cause the same to be done for Lessee and Lessee shall pay the expenses incurred by Lessor on demand, together with an administrative fee equal to ten percent (10%) of the amounts expended by Lessor, as well as interest at the Default Rate. Lessee shall, at its sole cost and expense, comply with all Governmental Restrictions regarding the collection, sorting, separation, and recycling of waste products, garbage, refuse and trash. Lessee shall sort and separate such waste products, garbage, refuse and trash into such categories as provided by Governmental Restrictions. Each separately sorted category of waste products, garbage, refuse and trash shall be placed in separate receptacles reasonably approved by Lessor. Such separate receptacles may, at Lessor's option, be removed from the Pad in accordance with a collection schedule prescribed by Governmental Restrictions. Lessor reserves the right to refuse to collect or accept from Lessee any waste products, garbage, refuse or trash that is not separated and sorted as required by Governmental Restrictions, and to require Lessee to arrange for such collection at Lessee's sole cost and expense using a contractor satisfactory to Lessor. Lessee shall pay all Losses and Liabilities that may be imposed on Lessor or Lessee by reason of Lessee's failure to comply with the provisions of this Article 29, and, at Lessee's sole cost and expense, Lessee shall indemnify, defend and hold Lessor and Lessor's agents and employees harmless for, from and against all Losses and Liabilities arising from such noncompliance.

## ARTICLE 30

### RESERVED

## ARTICLE 31

### MISCELLANEOUS

§31.01. There are no oral agreements between Lessor and Lessee affecting this Lease, the Demised Premises or the Shopping Center and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, letters of intent, site plans, leasing proposals, agreements and understandings, written or oral, whether prior or contemporaneous, if any, between Lessor and Lessee or displayed by Lessor to Lessee with respect to the Demised Premises and the Shopping Center, all of which shall be deemed superseded and of no further force and effect and none of which shall be used to interpret or construe this Lease. This Lease is and shall be considered to be the only agreement between Lessor and Lessee. All negotiations and oral agreements acceptable to Lessor and Lessee have been merged into and are included in this Lease. There are no representations or warranties between Lessor and Lessee except as expressly set forth in this Lease and all reliance with respect to representations is solely upon the express representations and agreements contained in this Lease. No course of prior dealings between Lessor and Lessee or their respective officers, employees, agents or Affiliates shall be relevant or admissible to supplement, explain or vary any of the express terms of this Lease. This Lease may not be modified in any respect except by an instrument signed in writing by Lessor and Lessee. Any course of conduct between Lessor and Lessee shall not constitute an amendment of this Lease.

§31.02. If Lessor or Lessee files a suit against the other which is in any way connected with this Lease, the unsuccessful party shall pay to the prevailing party a reasonable sum for attorneys' fees, costs and disbursements, including the fees, costs and disbursements of consultants, professionals, paralegals, whether at trial, appeal and/or in bankruptcy court, all of which will be deemed to have accrued on the commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment. To the fullest extent permitted by law, such fees, costs and disbursements will be based upon the actual and reasonable fees, costs and disbursements incurred and not by reference to the amount in controversy. In addition, in the event either party shall hire an attorney as a result of a breach by the other party of any term, covenant or provision of this Lease, in addition to paying any amounts outstanding and/or performing any obligation remaining to be performed, in order to fully cure such breach or default, the party in breach or default shall reimburse the other party for the reasonable attorneys' fees, costs and disbursements including the fees and disbursements of consultants, professionals and paralegals incurred

by the non-breaching party in enforcing the other party's obligations, whether or not a legal action is commenced, including the costs of preparing and presenting default notices, demand letters and similar non-judicial enforcement activities.

§31.03. This Lease and the covenants and conditions contained in this Lease shall inure to the benefit of and be binding upon Lessor, its successors and assigns and shall be binding upon Lessee, its successors and assigns and shall inure to the benefit of Lessee and only such Transferees of Lessee to whom the Transfer of this Lease and/or the Demised Premises by Lessee has been consented to by Lessor as provided for in Article 16.

§31.04. The words "Lessor" and "Lessee" as used in this Lease shall include the plural as well as the singular. The marginal headings and titles to the paragraphs of this Lease are not a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease.

§31.05. The laws of the State where the Shopping Center is situated shall govern the validity, performance and enforcement of this Lease, without regard to any conflict of laws principles to the contrary. Although the printed provisions of this Lease were drawn by Lessor, this Lease is the product of due negotiation between Lessor and Lessee, both of whom have been represented by (or have had the opportunity to be represented by) capable legal counsel. As such, this Lease shall not be construed either for or against Lessor or Lessee, but this Lease shall be interpreted in accordance with the plain meaning of the language contained in this Lease. In this regard, when used in this Lease, the word "include," shall be deemed to include the words "without limitation" and the use of the singular shall be deemed to include the plural and vice versa. In addition, if either party has made a scrivener's error with regard to division, multiplication, addition, or subtraction of any numbers or arithmetic calculation in this Lease, this Lease shall not be construed for or against either party by reason of the authorship or alleged authorship of any provision hereof.

§31.06. It is understood and agreed between Lessor and Lessee that their relationship at all times shall remain that of Lessor and Lessee, and that nothing in this Lease contained shall be deemed, held or construed as the creation of a partnership or joint venture as between the Lessor and Lessee in the conduct of Lessee's business. In no event, shall Lessor be liable for any debts, liabilities or obligations incurred by Lessee in the conduct of its business. Except to the extent a Person is expressly identified in this Lease as an intended third party beneficiary, there are no third party beneficiaries of any of the terms, covenants and provisions of this Lease.

§31.07. It is agreed that if any provision of this Lease shall be determined to be void by any court of competent jurisdiction then such determination shall not affect any other provisions of this Lease and all such other provisions shall remain in full force and effect. It is the intention of Lessor and Lessee that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

§31.08. Time is declared to be of the essence of this Lease and each and every provision of this Lease. For the purposes of all time requirements and limits set forth in this Lease, such requirements and limits (i) shall not include the day from which the period commences; (ii) shall expire precisely at 5:00 p.m. Phoenix, Arizona time on the final day; and (iii) shall be construed to mean calendar days; provided that if the final day of a time period falls on a Saturday, Sunday or legal holiday in the jurisdiction where the Premises are located, such period shall extend to the first business day thereafter. For the purposes of this Lease, a legal holiday shall mean a day on which the United States Post Office nearest the Premises is not open for counter business.

§31.09. A waiver of any breach or default shall not be a waiver of any other breach or default. Lessor's consent to, or approval of, any act by Lessee requiring Lessor's consent or approval shall not be deemed to waive or render unnecessary the need to obtain Lessor's written consent to or approval of any subsequent similar act by Lessee. Any course of conduct by Lessor and Lessee not in strict conformance with the provisions of this Lease shall be deemed to be a temporary relief from the express provisions of this Lease and not a waiver and shall be subject to reversal or retroactive revocation by Lessor at any time with or without notice. The grant or extension by Lessor of a waiver or indulgence to other Lessees or occupants of the Shopping Center shall not constitute a waiver of any term, covenant or provision of this Lease for the benefit of Lessee.

§31.10. If two (2) or more Persons shall execute this Lease as Lessee (or become bound as Lessee as a result of a Transfer or otherwise), the liability of each such Person to pay Minimum Rent, Percentage Rent, Impositions, Common Area Expenses, additional rent and other charges and to perform all other obligations under this Lease shall be deemed to be joint and several and all notices, payments and agreements given or made by, with or to any one of such Persons, shall be deemed to have been given or made by, with or to all of them. Landlord specifically agrees to look solely to Tenant for the recovery

of any judgment and agrees that Tenant's shareholders, venturers, partners, officers, directors and employees will not be personally liable for any such judgment or action.

§31.11. Lessee promises, covenants and agrees to not remain in possession of all or any part of the Demised Premises after the expiration of the Lease Term, without the express written consent of Lessor. No acceptance of Minimum Rent, Percentage Rent or additional rent and no act or statement by any employee, servant or agent of Lessor shall constitute the consent of Lessor to Lessee's holding over. Should Lessee hold over without the express written consent of Lessor, such tenancy shall be at the sufferance of Lessor, and not a renewal of the Lease Term or an extension of the Lease Term, and in such case, Minimum Rent, Percentage Rent and other monetary sums due under this Lease shall be payable at one and one-half (1½) times the amount set forth in this Lease and at the time specified in this Lease and such tenancy at sufferance shall be subject to every other term, covenant and agreement of this Lease. Lessee understands that Lessor is relying on Lessee's covenant to not hold over and to surrender the Demised Premises at the termination of the Lease Term. In the event Lessee holds over, Lessee shall be liable for all Lessor's direct and consequential damages, including costs, fees, expenses, claims, losses, liabilities, damages and attorneys' fees incurred by Lessor as a result of Lessee's holding over without Lessor's express written consent, including, but not limited to, damages and expenses incurred by Lessor for its inability to deliver possession of the Demised Premises to a new lessee.

§31.12. In the event Lessee shall be a corporation, partnership or limited liability company, the Persons executing this Lease on behalf of Lessee hereby covenant and warrant that (i) Lessee is a duly qualified corporation, partnership or limited liability company and all steps have been taken prior to the Effective Date of this Lease to qualify Lessee to do business in the State where the Shopping Center is situated, (ii) all franchise, corporate and other business taxes have been paid to date, and (iii) all forms, reports, fees and other documents necessary to comply with applicable laws have been and will be filed when due.

§31.13. Lessee represents and warrants to Lessor that it has had no dealings with any real estate broker, finder or agent in connection with the negotiations of this Lease, excepting only Caballo Associates and Colliers International (the "Broker") for whose commission, if any, Lessor is solely responsible pursuant to a separate agreement, and that it knows of no other real estate broker, company, finder or agent who is or might be entitled to a commission in connection with the execution of this Lease. No commission or fee shall be payable in connection with any expansion of the Demised Premises or extension of the Lease Term, except to the extent expressly set forth in a separate agreement between Lessor and Broker.

§31.14. Except as expressly set forth in this Lease, no representations, inducements, understanding or anything of any nature whatsoever, made, stated or represented by Lessor or anyone acting for or on Lessor's behalf, either orally or in writing, have induced Lessee to enter into this Lease, and Lessee acknowledges, represents and warrants that Lessee has entered into this Lease under and by virtue of Lessee's own independent investigation. In addition, except as expressly set forth in this Lease, by proceeding with this transaction after the expiration of the Feasibility Period described in §31.19 below, Lessee shall be deemed to accept the Demised Premises in its then "as is" and "where is" condition, without warranty of any kind, express or implied, including, without limitation, any warranty as to title, physical condition or the existence or absence of Hazardous Materials, and if the Demised Premises are not in all respects entirely suitable for the use or uses to which the Demised Premises or any part thereof will be put, then it is the sole responsibility and obligation of Lessee to take such action as may be necessary to place the Demised Premises in a condition entirely suitable for such use or uses. **IN CONNECTION WITH THE ABOVE, LESSEE ACKNOWLEDGES AND REPRESENTS TO LESSOR THAT DURING THE FEASIBILITY PERIOD, LESSEE SHALL HAVE AMPLE OPPORTUNITY TO INSPECT AND EVALUATE THE DEMISED PREMISES AND THE FEASIBILITY OF THE USES AND ACTIVITIES LESSEE IS ENTITLED TO CONDUCT ON THE DEMISED PREMISES; THAT LESSEE IS EXPERIENCED IN THE OPERATION OF RESTAURANTS; THAT LESSEE WILL RELY ENTIRELY ON LESSEE'S EXPERIENCE, EXPERTISE AND ITS OWN INSPECTION OF THE DEMISED PREMISES IN ITS CURRENT STATE IN PROCEEDING WITH THIS LEASE; THAT LESSEE WILL ACCEPT THE DEMISED PREMISES IN ITS PRESENT CONDITION, AND THAT, TO THE EXTENT THAT LESSEE'S OWN EXPERIENCE WITH RESPECT TO ANY OF THE FOREGOING IS INSUFFICIENT TO ENABLE LESSEE TO REACH AND FORM A CONCLUSION, LESSEE HAS ENGAGED THE SERVICES OF PERSONS QUALIFIED TO ADVISE LESSEE WITH RESPECT TO SUCH MATTERS. LESSEE IS NOT RELYING ON ANY EXPRESS OR IMPLIED, ORAL OR WRITTEN REPRESENTATIONS, OR WARRANTIES MADE BY LESSOR OR ITS REPRESENTATIVES, OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS LEASE.**

§31.15. Subject to applicable Governmental Restrictions, Lessee may, at its sole cost and expense, install signage on its Building. The criteria currently governing signage within the Shopping Center is attached to this Lease as Exhibit "C" (the "Sign Criteria"). All of Lessee's signage must



§31.22. LESSOR AND LESSEE ACKNOWLEDGE AND AGREE THAT EACH OF LESSOR AND LESSEE IS SOPHISTICATED AND EXPERIENCED IN COMMERCIAL REAL ESTATE TRANSACTIONS AND HAS BEEN REPRESENTED BY COMPETENT LEGAL COUNSEL IN CONNECTION WITH THE PREPARATION, NEGOTIATION AND EXECUTION OF THIS LEASE. AS REFERENCED IN §31.01 ABOVE, LESSOR AND LESSEE INTEND THAT THIS LEASE CONSTITUTE THE ENTIRE AGREEMENT OF THE PARTIES AND THAT THIS LEASE NOT BE DEEMED TO INCLUDE, BY IMPLICATION OR OTHERWISE, ANY TERM, COVENANT OR PROVISION NOT EXPRESSLY SET FORTH IN THIS LEASE. AS SUCH, LESSOR AND LESSEE EACH HEREBY WAIVE AND DISCLAIM ANY COVENANT OR OBLIGATION OF GOOD FAITH AND FAIR DEALING THAT MAY BE IMPLIED IN THIS LEASE AND EACH OF LESSOR AND LESSEE ACKNOWLEDGE AND AGREE THAT NEITHER HAS ANY OBLIGATION TO BARGAIN IN GOOD FAITH OR IN ANY WAY OTHER THAN AT ARM'S LENGTH. NEITHER LESSOR NOR LESSEE MAY REASONABLY RELY ON ANY PROMISE INCONSISTENT WITH THE PROVISIONS OF THIS ARTICLE. THIS ARTICLE SUPERSEDES ANY OTHER CONFLICTING LANGUAGE CONTAINED IN THIS LEASE WHICH MAY IMPLY THE EXISTENCE OF A COVENANT OF GOOD FAITH AND FAIR DEALING.

§31.23. Neither the preparation nor delivery of this Lease to Lessee for examination shall be deemed to be an offer by Lessor to lease the Demised Premises to Lessee or a reservation of or option to lease the Demised Premises, but shall be merely a part of the negotiations between Lessor and Lessee and the execution of this Lease by Lessee shall be deemed to constitute an offer by Lessee to lease the Demised Premises from Lessor upon the terms and conditions contained in this Lease which offer may be accepted or rejected by Lessor in its sole and absolute discretion and if accepted, such acceptance shall only be by the execution of this Lease by Lessor. Lessor shall have no obligation or liability to Lessee whatsoever until such time as Lessor shall have executed this Lease and delivered a copy of such executed Lease to Lessee and all conditions precedent to Lessor's obligations have been satisfied or waived.

§31.24. Lessor and Lessee acknowledge and agree that Lessor has disclosed to Lessee that Lessor and/or Lessor's Affiliates or constituent partners or members are licensed real estate brokers in the State of Arizona and that employees, Affiliates and constituent partners or members of Lessor, Lessor's Affiliates and/or Lessor's constituent partners or members are licensed real estate salespersons in the State of Arizona.

§31.25. Within ten (10) days following the Effective Date of this Lease, or as soon thereafter as possible, Lessor shall cause to be delivered to Lessee by Lawyers Title Insurance Corporation (or such other title insurance company as may be selected by Lessor) a current preliminary title report of the Shopping Center. If Lessee shall so request, Lessor shall reasonably cooperate with Lessee in Lessee's efforts to obtain from Lawyers Title Insurance Corporation (or such other title insurance company as may be selected by Lessor) a current preliminary title report of the Demised Premises leading to the issuance of an extended coverage leasehold policy of title insurance, together with copies of all instruments of record referred to therein. All Impositions affecting the Demised Premises shall be current and shall be prorated between Lessor and Lessee as of the Rent Commencement Date. Prior to the expiration of the Feasibility Period, Lessor shall remove of record all monetary encumbrances affecting the Demised Premises (except non-delinquent prorated taxes and assessments) for which Lessee does not receive a recognition and non-disturbance agreement. Lessee shall have until ten (10) days prior to the expiration of the Feasibility Period to object in writing, by notice to Lawyers Title Insurance Corporation and Lessor to the legal description or any matters affecting title, including assessments and taxes, shown on the title report. Lessor shall exercise reasonable diligence to cure such matters, but shall have no obligation to cure any such matter. If Lessor does not cure those matters objected to by Lessee within ten (10) days after receipt by Lessor of Lessee's notice, Lessee may, as its sole and exclusive remedy, within five (5) days after the expiration of such ten (10) day period, elect to waive the matters objected to by written notice to Lessor, or may terminate this Lease by notice to Lessor. Failure of Lessee to so notify Lessor shall be deemed a waiver of its objections.

§31.26. Lessee acknowledges that Lessee's rights under the Lease are subject to the terms and conditions of the Declarations. Lessor grants to Lessee the benefit of Lessor's non-exclusive easements, rights, licenses, privileges and servitudes reserved in, or granted by, the Declarations for the benefit of Lessor, including but not limited to (i) ingress/egress, cross traffic, pedestrian and vehicular traffic, and parking in the Common Areas of the Shopping Center; and (ii) use of utility lines, drainage, and sanitary sewer system in the Shopping Center. Lessor further agrees that Lessor shall not, without the prior written consent of Lessee, execute any documents terminating the Declarations or modifying the Declarations where such modification would materially adversely affect Lessee's rights under this Lease. Lessor agrees to make commercially reasonable efforts to cause the other parties to the Declarations or any beneficiaries thereof (collectively, "Co-Parties") to observe and comply with the terms and conditions thereof.

§31.27. LESSOR AND LESSEE EACH WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY OF ANY CONTRACT OR TORT CLAIM, COUNTERCLAIM, CROSS-COMPLAINT OR CAUSE OF ACTION IN ANY ACTION, PROCEEDING OR HEARING BROUGHT BY EITHER LESSOR OR LESSEE AGAINST THE OTHER ON ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS LEASE. THE RELATIONSHIP OF LESSOR AND LESSEE OR LESSEE'S USE OR OCCUPANCY OF THE PAD, INCLUDING ANY CLAIM OF INJURY OR DAMAGE OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY CURRENT OR FUTURE LAW, STATUTE, REGULATION, CODE OR ORDINANCE.

§31.28. Lessor reserves the right to establish a webpage or website for the Shopping Center. Should Lessor establish a webpage or a website for the Shopping Center, Lessor may identify Lessee by name on such website or web page as a tenant of the Shopping Center. Lessor and Lessee acknowledge and agree that any website or webpage developed for the Shopping Center shall be the sole property of Lessor and Lessor reserves the right, in its sole discretion, to add or delete links, to accept, edit or reject content and to accept, edit or reject any advertising copy.

§31.29. LESSOR RESERVES THE ABSOLUTE RIGHT TO EFFECT SUCH OTHER TENANCIES IN THE SHOPPING CENTER AS LESSOR, IN THE EXERCISE OF LESSOR'S SOLE BUSINESS JUDGMENT, SHALL DETERMINE TO BEST PROMOTE THE INTERESTS OF THE SHOPPING CENTER. LESSEE DOES NOT RELY ON THE FACT, NOR DOES LESSOR REPRESENT, THAT ANY SPECIFIC LESSEE OR NUMBER OF LESSEES SHALL DURING THE LEASE TERM OCCUPY ANY SPACE IN THE SHOPPING CENTER. THE VACATION, ABANDONMENT OR CESSATION OF OPERATIONS BY ANY LESSEE, INCLUDING A MAJOR LESSEE, SHALL NOT DIMINISH OR EXCUSE LESSEE'S OBLIGATIONS UNDER THIS LEASE.

§31.30. Annually during the Lease Term, promptly following Lessor's written request, Lessee shall provide to Lessor financial statements which will include a balance sheet and income statement. Non-audited financial statements (consisting of a balance sheet and an income statement) shall be certified to Lessor and Lessor's lender, if applicable, as being accurate and complete in all material respects (the "Certified Statements"). The Certified Statements shall be signed by an officer, authorized agent, partner or managing member of the Lessee.

§31.31. Lessee shall use the name of the Shopping Center in its advertising as the address reference for the Demised Premises. Lessee shall not use the name of the Shopping Center for any other purpose. Lessor reserves the right, in its sole discretion, to change the name and/or logo of the Shopping Center at any time.

§31.32. Lessee represents and warrants to Lessor that neither Lessee nor to Lessee's current actual knowledge and without investigation any Affiliate or Representative of Lessee (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Asset Control, Department of the Treasury ("OFAC") pursuant to Executive Order number 13224, 66 Federal Register 49079 (September 25, 2001) (the "Order"); (ii) is listed on any other list of terrorists or terrorist organizations maintained pursuant to the Order, the rules and regulations of the OFAC or any other applicable requirements contained in any enabling legislation or other executive orders in respect of the Order (the Order and such other rules, regulations, legislation or orders are collectively in this §31.32 called the "Orders"); (iii) is engaged in activities prohibited in the Orders; or (iv) has been convicted, pleaded no to contendere, indicted, arraigned or custodially detained on charges involving money laundering or predicate crimes to money laundering.

§31.33. Lessee acknowledges that Lessor has entered into the Development Agreement with the City and that Lessor may receive certain economic development incentives in exchange for performing certain obligations thereunder. Lessee further acknowledges and agrees that Lessee is not entitled to any portion of the economic development incentives and that the economic development incentives are the sole property of Lessor. Lessor warrants that it has not paid or given, and will not pay or give, any third Person any money or consideration for obtaining the Development Agreement.

§31.34. Intentionally Omitted.

§31.35. Intentionally Omitted.

§31.36. Intentionally Omitted.

## ARTICLE 32

### LEASEHOLD MORTGAGES

§32.01. Lessee shall not encumber this Lease or any right or interest hereunder without first obtaining the prior written consent of the Lessor, which consent Lessor shall not unreasonably withhold. No encumbrance shall be valid or effective without such prior written consent and approval. Lessor shall not withhold its consent to such encumbrance provided that the requirements of the last sentence of this §32.01 are satisfied. Such consent shall be evidenced by the execution and delivery by Lessor of a subordination of Landlord's liens in the form attached to this Lease as Exhibit "E". Should Lessee attempt to make or allow to be made any encumbrance without the required consent and approval, Lessee shall have committed an Event of Default. If, with the consent of the Lessor, Lessee shall mortgage or grant a deed of trust with respect to its interest under this Lease, and if the holder of such encumbrance (the "Leasehold Mortgagee") shall forward to Lessor an executed counterpart of such mortgage or deed of trust (both instruments being referred to in this Article 32 as a "Leasehold Mortgage") in a form proper for recording, together with a notice setting forth the name and address of the Leasehold Mortgagee, then until the time, if any, that the Leasehold Mortgage shall be satisfied of record or the Leasehold Mortgagee shall deliver to Lessor written notice that the Leasehold Mortgage has been satisfied, the provisions of this Article 32 shall be applicable. No Leasehold Mortgagee shall be in an amount in excess of eighty percent (80%) of the fair market value of the Building and Improvements on the Demised Premises and Lessee's leasehold estate in, as certified by the Leasehold Mortgagee to Lessor, which certification shall be accompanied by a copy of such Leasehold Mortgagee's appraisal of the Demised Premises and the Building and Improvements thereon.

§32.02. This Lease shall not be canceled, surrendered, modified or amended by agreement of the Lessor and Lessee without the prior written consent of the Leasehold Mortgagee.

§32.03. If Lessor shall give any notice of default, demand to cure a default, or other communication pertaining to an Event of Default (collectively, a "Default Message") to Lessee, Lessor shall, at the same time, deliver a copy of each such Default Message to the Leasehold Mortgagee at the address designated by the Leasehold Mortgagee. Copies of Default Messages shall be sent in accordance with the provisions of §19. No Default Message given by Lessor to Lessee shall be binding upon or affect the Leasehold Mortgagee unless a copy of the Default Message shall be delivered to the Leasehold Mortgagee pursuant to the provisions of this §32.03. In the event of an assignment of the Leasehold Mortgage or change in address of the Leasehold Mortgagee, the assignee or Leasehold Mortgagee, by notice to Lessor, may change the address to which copies of Default Messages are to be sent. Lessor shall not be bound to recognize any assignment of the Leasehold Mortgage unless and until Lessor shall be given notice of the assignment and the name and address of the assignee, and thereafter such assignee shall be deemed to be the "Leasehold Mortgagee" under this Article 32.

§32.04. The Leasehold Mortgagee shall have the right to perform any term, covenant, condition or agreement and to remedy any breach or nonperformance by Lessee under this Lease, and Lessor shall accept such performance by the Leasehold Mortgagee with the same force and effect as if furnished by Lessee; provided, however, that the Leasehold Mortgagee shall not be subrogated to the rights of Lessor.

§32.05. Lessee may delegate irrevocably to the Leasehold Mortgagee the authority to exercise any or all of Lessee's rights or responsibilities hereunder, but no such delegation shall be binding upon Lessor, unless and until either Lessee or the Leasehold Mortgagee shall give to Lessor a true copy of a written instrument effecting such delegation. Such delegation of authority may be effected by the terms of the Leasehold Mortgage itself, in which case the service upon Lessor of an executed counterpart or certified copy of the Leasehold Mortgage in accordance with this §32, together with a notice specifying the provisions therein which delegate such authority to the Leasehold Mortgagee, shall be sufficient to give Lessor notice of such delegation.

§32.06. If Lessor shall be entitled to exercise the remedies described in §17.02 because Lessee commits an Event of Default, Lessor shall, before exercising the remedies described in §17.02, give to the Leasehold Mortgagee a notice that an Event of Default has occurred and that Lessor is entitled to exercise the remedies described in §17.02, and the Leasehold Mortgagee shall have the right to remedy such Event of Default within ten (10) days (if such Event of Default pertains to the payment of Minimum Rent or additional rent) or thirty (30) days (if such Event of Default pertains to any other covenant of this Lease) after the giving of such further notice.

§32.07. In case of the occurrence of an Event of Default (other than an Event of Default with respect to the payment of Minimum Rent or additional rent), if within thirty (30) days after the notice referred to in §32.06 above, the Leasehold Mortgagee shall:

(a) notify Lessor of its election to proceed with due diligence to acquire possession of the Demised Premises or to foreclose the Leasehold Mortgage or to otherwise extinguish Lessee's

rights under this Lease, and together with such notice shall deliver to Lessor all Minimum Rent and additional rent then due and owing;

(b) deliver to Lessor an instrument in writing duly executed and acknowledged wherein the Leasehold Mortgagee agrees that:

(i) during the period that the Leasehold Mortgagee or a receiver of rents and profits appointed upon its application shall be in possession of the Demised Premises and/or during the pendency of any such foreclosure or other proceedings and until Lessee's rights under this Lease shall terminate, as the case may be, it will pay or cause to be paid to Lessor all Minimum Rent and additional rent from time to time becoming due under this Lease; and

(ii) if delivery of possession of the Demised Premises shall be made to the Leasehold Mortgagee or to such receiver (or, in the event the Leasehold Mortgagee is a life insurance company, savings and loan association, real estate investment trust, bank, trust company or other institutional lender (an "Institution"), to its nominee), whether voluntarily or pursuant to any foreclosure or other proceedings or otherwise, the Leasehold Mortgagee shall, promptly following such delivery of possession, perform or cause such nominee to perform, as the case may be, such of the covenants herein contained on Lessee's part to be performed as Lessee shall have failed to perform to the date of delivery of possession and to perform all other covenants Lessee shall have failed to perform promptly after extinguishment of Lessee's interest in this Lease;

then Lessor shall postpone the exercise the remedies described in §17.02 for such period or periods of time as may be reasonably necessary for the Leasehold Mortgagee, with the exercise of due diligence, to extinguish Lessee's interest in this Lease and to perform or cause to be performed all of the covenants to be performed by Lessee, at which time this Lease shall be considered in full force and effect and all occurrences which constitute the basis for an Event of Default which cannot be cured by the payment of money or by the acts of the Leasehold Mortgagee shall be deemed waived. Nothing herein contained shall affect the right of Lessor upon the subsequent occurrence of an Event of Default to exercise any right or remedy herein reserved to Lessor.

§32.08. No Leasehold Mortgage now or hereafter a lien upon the Lessee's leasehold interest in the Demised Premises shall extend to or affect the reversionary interest and fee estate of Lessor in and to the Demised Premises or in any manner attach to or affect the Demised Premises from and after any expiration or termination of this Lease. Lessor shall not be obligated to (i) subordinate its interest in the Demised Premises to any Leasehold Mortgage or other lien or encumbrance whatsoever, or (ii) guaranty any Leasehold Mortgage or any other obligation of Lessee whatsoever.

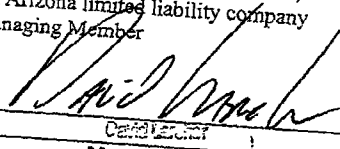
§32.09. Lessor and Lessee acknowledge and agree that the provisions of this Article 32 are personal to the originally named Lessee and any Transferee pursuant to a Permitted Transfer and shall not be applicable to any other Person.

IN WITNESS WHEREOF, the Lessor and Lessee have each caused this Lease to be executed the day and year first above written.

LESSOR:

POWER & RAY, LLC, an  
Arizona limited liability company

By: VESTAR ARIZONA XXX, L.L.C.,  
an Arizona limited liability company  
Its: Managing Member

By:   
Name: David Smith  
Its: Manager

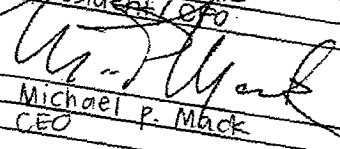
Signature Date: 5/30/06

12 MAY 2014 PM 11:00

LESSEE:

GARDEN FRESH RESTAURANT CORP.,  
a Delaware corporation

By:   
Name: David W. Qualls  
Its: President/CEO

By:   
Name: Michael P. Mack  
Its: CEO

Signature Date: May 19, 2000

If Lessee is a CORPORATION, the authorized officers must sign on behalf of the corporation and indicate the capacity in which they are signing. The Lease must be executed by the president or vice president and the secretary or assistant secretary, unless the bylaws or a resolution of the board of directors shall otherwise provide, in which event, the bylaws or a certified copy of the resolution, as the case may be, must be attached to this Lease



\* the later of these two dates shall be the Effective Date of this Lease.

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE DEMISED PREMISES**

All of that real property located in the Town of Gilbert, County of Maricopa, State of Arizona more particularly described as follows:

Lot 13, Gilbert Gateway Towne Center, NWC Power Road and Ray Road, shown by map on file in Book 661, Page 44 of Maps, Official Records of Maricopa County, Arizona.

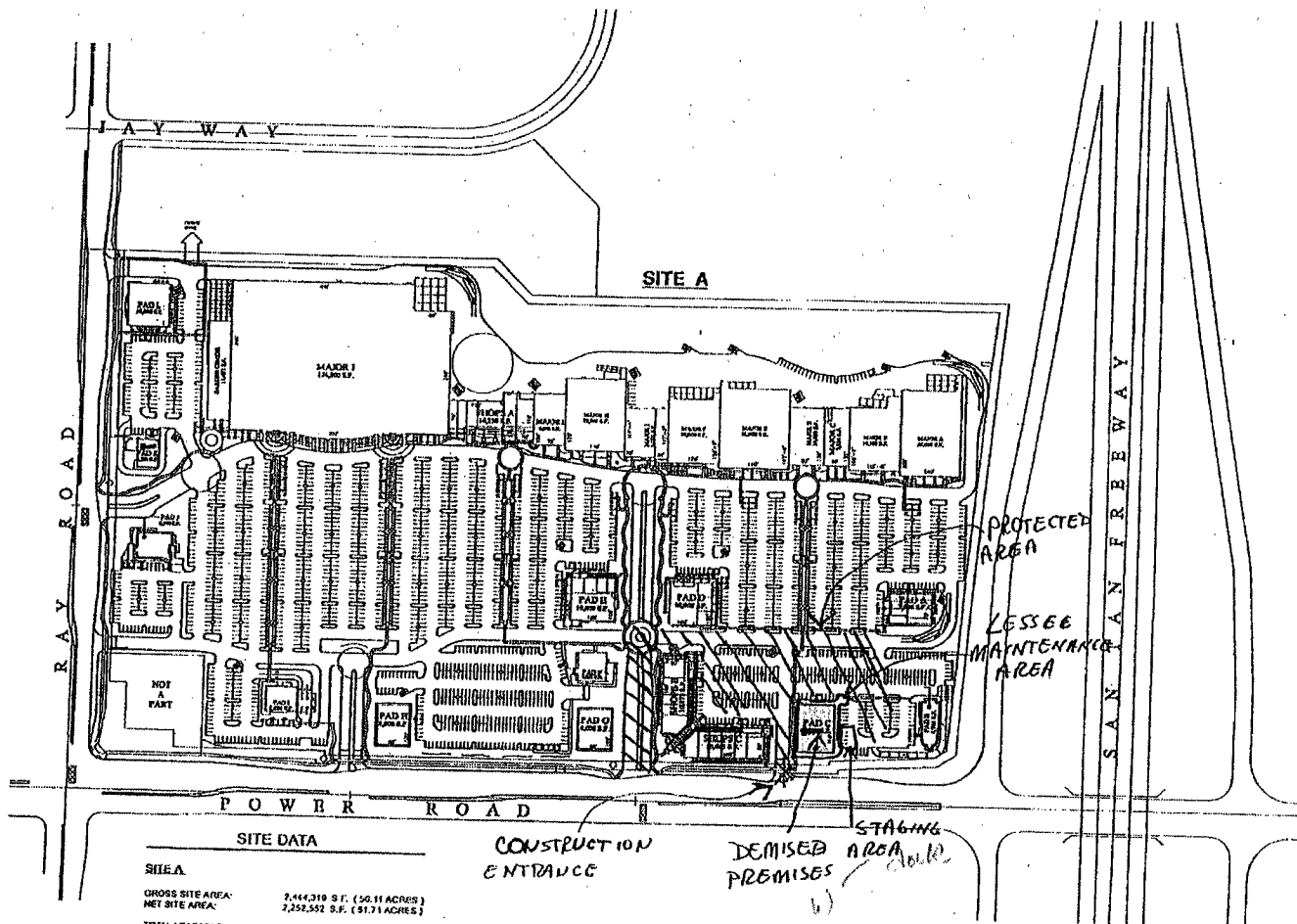
12 AUG 20 11 PM 0001

**EXHIBIT "B"**  
**SITE PLAN**

The attached site plan is for general informational purposes only. Subject to the limitations set forth in this Lease, any and all features, matters and other information depicted thereon are for illustrative purposes only and subject to the provisions of the Lease, are subject to modification without notice, are not intended to be relied upon by Lessee and are not intended to constitute representations, warranties or covenants as to the size and nature of the improvements to be constructed (or that any improvements will be constructed) or as to the identity or nature of any occupants thereof.

**EXHIBIT B SITE PLAN OF THE SHOPPING CENTER SHALL IDENTIFY:**

- Demised Premises
- Staging Area
- Construction Entrance
- Lessee Maintenance Area
- Lessee Protected Area



SITE DATA	
SITE A	
GROSS SITE AREA:	2,444,319 S.F. (56.11 ACRES)
NET SITE AREA:	2,252,552 S.F. (51.71 ACRES)
TOTAL LEASABLE AREA:	455,481 S.F.
TOTAL PARKING RATIO:	6.16/1000

**VESTAR**  
DEVELOPMENT

**Gilbert Gateway**  
Towne Center

S.W.C. POWER RD. & RAY RD.  
GILBERT, ARIZONA

1.20.06  
**B**  
Biller Design Group, Inc.  
Architect & Planner

12 AUG 20 11 47 AM 1001

**EXHIBIT "B-1"**  
**LEGAL DESCRIPTION OF SHOPPING CENTER**

All of that real property located in the Town of Gilbert, County of Maricopa, State of Arizona more particularly described as follows:

Lot 1 and Lots 3 through 15 of Gilbert Gateway Towne Center, NWC Power Road and Ray Road, shown by Map on file in Book 661, Page 44 of Maps, official records of Maricopa County, Arizona.

EXHIBIT "C"

SIGN CRITERIA

112 AUG 30 1997. Dept 401001

## **Gilbert Gateway Towne Center General Requirements Building Signage**

These criteria have been established for the purpose of maintaining a continuity of quality and aesthetics throughout Gilbert Gateway Towne Center for the mutual benefit of all tenants, and to comply with the approved Comprehensive Sign Plan for the shopping center, regulations of the Town of Gilbert sign ordinance, building and electrical codes of any governmental authority having jurisdiction. Conformance will be strictly enforced, and any non-compliant sign(s) installed by a Tenant shall be brought into conformance at the sole cost and expense of the Tenant. This criteria is subject to final approval by the Town of Gilbert as part of a Comprehensive Sign Plan submittal. If a conflict is found to exist between these criteria and the final criteria approved by the city, the latter shall prevail.

### **I. GENERAL REQUIREMENTS**

- A. Tenant shall submit or cause to be submitted to Landlord, for approval, prior to fabrication, four (4) copies of detailed drawings indicating the location, size, layout, design color, illumination materials and method of attachment.
- B. Tenant or Tenant's representative shall obtain all permits for signs and their installation.
- C. All signs shall be constructed and installed at Tenant's sole expense.
- D. Tenant shall be responsible for the fulfillment of all requirements and specifications, including those of the local municipality.
- E. All signs shall be reviewed for conformance with these criteria and overall design quality. Approval or disapproval of sign submittals based on aesthetics of design shall remain the sole and exclusive right of Landlord or Landlord's authorized representative.

- F. Tenant shall be responsible for the installation and maintenance of Tenant's sign. Should Tenant's sign require maintenance or repair, Landlord shall give Tenant thirty (30) days written notice to effect said maintenance or repair. Should Tenant fail to do the same, Landlord may undertake repairs and Tenant shall reimburse Landlord within ten (10) days from receipt of Landlord's invoice.
- G. Advertising devices such as attraction boards, posters, banners and flags shall be permitted in accordance to Sections 3.72A and 3.72B of the Town of Gilbert Sign ordinance. Tenant shall obtain Landlord's approval in addition to any permit(s) required by the Town of Gilbert. (Revised 2/28/2005)

## II. SPECIFICATIONS - TENANT SIGNS

- A. General Specifications
  - 1. No animated, flashing or audible signs shall be permitted.
  - 2. All signs and their installation shall comply with all local building and electrical codes.
  - 3. No exposed raceways, crossovers or conduit shall be permitted.
  - 4. All electrical enclosures, conductors, transformers and other equipment shall be concealed.
  - 5. Painted lettering shall not be permitted except as approved by the Landlord and the Town of Gilbert.
  - 6. Any damage to the sign band face or roof deck resulting from Tenant's sign installation shall be repaired at Tenant's sole cost.
  - 7. Upon removal of any sign by Tenant, any damage to the sign band face shall be repaired by Tenant or by Landlord at Tenant's cost.

B. Location of Signs

1. All signs or devices advertising an individual use, business or building shall be attached to the building at the location directed by Landlord.

III. DESIGN REQUIREMENTS

Individual illuminated letters and logos may include pan channel metal letters with acrylic sign faces, reverse pan channel "backlit" illuminated letters, or any combination thereof. The letters are to be flush mounted onto the building fascia. Electrical connections shall be concealed to remote transformers. All signage shall be installed in compliance to Town of Gilbert electrical code and UL 2161 / UL 48 specifications. Any sign installation determined to be non-compliant shall be repaired immediately by the Tenant at Tenant's sole expense.

A. Sign Area

1. The maximum aggregate sign area per building elevation for each tenant shall be calculated by multiplying one and one-half (1.5) times the length of the storefront(s) and/or elevation(s) occupied by the tenant. Each tenant shall be permitted a minimum of forty (40 SF) square feet of sign area.

B. Letter Height and Placement Restrictions

1. Tenant signage shall be installed in accordance with the approved Comprehensive Sign Plan in location designated by the Landlord and/or Landlord's agents.
2. Tenants occupying less than 14999 SF shall be limited to a maximum letter height of thirty-six (36") inches. Tenants occupying 15000 SF through 50000 SF shall be limited to a maximum letter height of sixty (60") inches. All tenants, with the exception of Major "J", occupying greater than 50000 SF shall be limited to a maximum letter height of seventy-two (72") inches. All major tenants shall be permitted to utilize their standard corporate identification program subject to sign area

limitations contained in the approved Comprehensive Sign Plan. All signage shall be reviewed by the developer and shall be approved based upon the findings that the signage complements the surrounding building features and thematic design of the Gilbert Gateway Towne Center project.

3. Length of Sign on Wall Surface: In no event shall any sign exceed eighty (80%) percent of the building elevation and/or wall surface upon which it is placed. The available surface area of the sign band shall regulate letter height. (Revised 2/28/2005)
4. Shop tenant signage shall not exceed eighty (80%) percent of Tenant's leased storefront length. (Revised 2/28/2005)

C. Letter Style or Logo Restrictions

1. Copy and/or logos utilized shall be Tenant's choice, subject to the approval of Landlord and/or Landlord's agents and the Town of Gilbert.

D. Illumination

1. Tenant building signage may be internally illuminated, backlit to create a silhouette, exposed neon and/or combination of lighting methods mentioned herein.

E. Under Canopy Sign (Revised 1/5/2006)

1. Each Shop Tenant shall be required to install graphic copy, at Tenant's cost, on the under canopy blade sign furnished by the Developer in accordance to the specifications contained in this Comprehensive Sign Plan. Anchor, Majors and Pad Tenants shall have the option to do so. For cost efficiencies and design/construction uniformity, all under canopy blade signs will be manufactured by the Developer's project sign contractor and purchased in bulk by Developer. Each Tenant that is required to have a blade sign shall reimburse the Developer for the cost of the display and its installation thereof.

limitations contained in the approved Comprehensive Sign Plan. All signage shall be reviewed by the developer and shall be approved based upon the findings that the signage complements the surrounding building features and thematic design of the Gilbert Gateway Towne Center project.

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# Sign Matrix Pad Tenants

SIGN	SIGN TYPE	FUNCTION	LOCATION	HEIGHT	SIZE	ILLUMINATION	MATERIALS
Pad Tenant	Wall Signs	Tenant ID	Wall surfaces and architectural features designed to accommodate signage.	Within Building Silhouette	1.5 SF / Linear Foot of Building Street Frontage (Typical) 40 SF Minimum (Typical) 36" Maximum Letter Height	Interior, Backlit, or a combination thereof.	Aluminum, Acrylic, Painted Metal, Flexface Material
Pad Tenant	Under Canopy Blade Sign	Tenant ID	In front of tenant's leased space	Below architectural canopy. Maintain 8' Clearance AFF	8 SF	Non-Illuminated	Aluminum, Acrylic, Painted Metal, Vinyl Graphics
Pad Tenant	Menu Signs	Menu Display and Pricing	Drive Thru	Per Sign Ordinance	Per Sign Ordinance	Interior and Ground Illumination	Aluminum, Acrylic, Painted Metal, Flexface Material
Pad Tenant	Traffic Directionals	Vehicular	Driveways and Drive Thru as Required	Per Sign Ordinance	Per Sign Ordinance	Interior and Ground Illumination	Aluminum, Acrylic, Painted Metal, Flexface Material
Pad Tenant	ATM	ATM	Wall or Freestanding	Per Sign Ordinance	Per Sign Ordinance	Interior and Ground Illumination	Aluminum, Acrylic, Painted Metal, Flexface Material

Sign types, quantities, and sizes approved by Ordinance No. 1425 by the Town of Gilbert Mayor and City Council on September 17, 2002.

All signs are subject to Design Review Board Approval.

**EXHIBIT "D"**  
**MEMORANDUM OF GROUND LEASE**

**WHEN RECORDED RETURN TO:**

David L. Lansky, Esq.  
MARISCAL, WEEKS, McINTYRE & FRIEDLANDER  
2901 North Central Avenue, Suite 200  
Phoenix, Arizona 85012

**MEMORANDUM OF GROUND LEASE**

THIS MEMORANDUM OF GROUND LEASE shall evidence that there is in existence a Lease as hereinafter described. It is executed by the parties hereto for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede or otherwise effect the terms and provisions of said Lease.

1. Name of Document: GILBERT GATEWAY TOWNE CENTER-PHASE I GROUND LEASE
2. Name of Lessor: Power & Ray, LLC, an Arizona limited liability company
3. Name of Lessee: GARDEN FRESH RESTAURANT CORP., a Delaware corporation
4. Address of Lessor: c/o Vestar Development Co.  
2425 East Camelback Road, Suite 750  
Phoenix, Arizona 85016
5. Address of Lessee: Garden Fresh Restaurant Corp.  
15822 Bernardo Center Drive, Suite A  
San Diego, California 92127  
Attention: Legal Department
6. Date of Ground Lease: May \_\_\_\_, 2006.
7. Initial Lease Term: Commencing on the Rent Commencement Date and expiring twenty (20) years thereafter.
8. Option to Extend: Lessee has the option to extend the Initial Lease Term for two (2) additional periods of five (5) years each.
9. Demised Premises: The real property more particularly described in Exhibit "A" attached hereto.

A copy of the Ground Lease is on file with Lessor and Lessee at their respective addresses set forth above.

IN WITNESS WHEREOF, parties have executed this Memorandum of Ground Lease this \_\_\_\_\_ of \_\_\_\_\_, 200\_\_\_\_.

LESSEE:

GARDEN FRESH RESTAURANT CORP.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

LESSOR:

POWER & RAY, LLC, an  
Arizona limited liability company

By: VESTAR ARIZONA XXX, L.L.C.,  
an Arizona limited liability company  
Its: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF ARIZONA

County of Maricopa

)  
) ss.  
)

On \_\_\_\_\_, 200\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in  
and for said state, personally appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to  
the within instrument and acknowledged to me that they executed the same in their authorized capacities,  
and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons  
acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State  
My Commission Expires: \_\_\_\_\_

STATE OF ARIZONA

County of Maricopa

)  
) ss.  
)

On \_\_\_\_\_, 200\_\_\_\_ before me, \_\_\_\_\_, a Notary Public in  
and for said state, personally appeared \_\_\_\_\_, personally known to me  
(or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to  
the within instrument and acknowledged to me that they executed the same in their authorized capacities,  
and that by their signatures on the instrument, the persons, or the entity upon behalf of which the persons  
acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A TO MEMORANDUM OF GROUND LEASE  
LEGAL DESCRIPTION OF DEMISED PREMISES**

All of that real property located in the Town of Gilbert, County of Maricopa, State of Arizona more particularly described as follows:

Lot 13, Gilbert Gateway Towne Center, NWC Power Road and Ray Road, shown by map on file in Book 661, Page 44 of Maps, Official Records of Maricopa County, Arizona.

**EXHIBIT "E"**  
**SUBORDINATION OF LANDLORD'S LIENS**

STORE NUMBER \_\_\_\_\_

**First Lien Agent:**

General Electric Capital Corporation  
 17207 North Perimeter Drive  
 Scottsdale, Arizona 85255

**Second Lien Agent:**

General Electric Capital Corporation  
 17207 North Perimeter Drive  
 Scottsdale, Arizona 85255

**Premises:**

Commonly known as 4928 South Power Road, Gilbert, Arizona 85236

**Landlord:**

Power & Ray, L.L.C.

**Tenant:**

Garden Fresh Restaurant Corp.

**Leases:**

That certain 20 year lease between Landlord and Tenant dated May \_\_, 2006

1. **Estoppel:** Landlord and Tenant hereby represent to the First Lien Agent and Second Lien Agent (together, the "**Agents**") that (i) the Lease is in full force and effect and except for any amendments identified in the preamble to this Subordination of Landlord's Lien, remains unmodified; (ii) no notice of termination of the Lease has been sent or received by either Landlord or Tenant; (iii) rent has been paid through March 31, 2006; and (iv) there are no defaults under the Lease, nor has any event occurred which, with the giving of notice or lapse of time, or both, would constitute a default under the Lease.

Landlord acknowledges and agrees that upon either Agent's reasonable request from time to time, Landlord shall deliver to such Agent an estoppel certificate in form and substance to the reasonable satisfaction of such Agent stating, among other things: (i) whether the Lease is in full force and effect and is unmodified; (ii) whether no notice of termination thereof has been served on Tenant; (iii) the date through which rent has been paid; and (iv) whether there are any defaults thereunder and specifying the nature of any such defaults.

2. **Landlord's Consent:** Landlord acknowledges that, in connection with the extension of certain credit facilities by (i) First Lien Agent and certain other lenders (together with the First Lien Agent, the "**First Lien Lenders**") to Tenant pursuant to the terms of a certain Credit Agreement by and among First Lien Lenders, Tenant and certain affiliates of Tenant and (ii) Second Lien Agent and certain other lenders (together with the Second Lien Agent, the "**Second Lien Lenders**") to Tenant pursuant to the terms of a certain Second Lien Credit Agreement by and among Second Lien Lenders, Tenant and certain affiliates of Tenant, Tenant has granted First Lien Lenders and Second Lien Lenders security interests in inventory, equipment, removable trade fixtures and all other personal property, wherever located, whether tangible or intangible, now owned or hereafter acquired by the Tenant (the "**Collateral**"), all as more fully described in a certain (i) Leasehold [Mortgage] [Deed of Trust], Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (the "**First Lien Leasehold Mortgage**") by the Tenant in favor of the First Lien Lenders, and in a certain Security Agreement (the "**First Lien Security Agreement**"), by and between First Lien Agent and Tenant and (ii) Second Lien Leasehold [Mortgage] [Deed of Trust], Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (the "**Second Lien Leasehold Mortgage**") by the Tenant in favor of the Second Lien Lenders, and in a certain Security Agreement (the "**Second Lien Security Agreement**"), by and between Second Lien Agent and Tenant. Tenant's shareholder has granted to First Lien Lenders and Second Lien Lenders a pledge of all of the ownership interests in Tenant pursuant to a certain (i) Pledge Agreement executed by Tenant in favor of the First Lien Lenders (the "**First Lien Pledge Agreement**") and (ii) Pledge Agreement executed by Tenant in favor of the Second Lien Lenders (the "**Second Lien Pledge Agreement**"). Landlord hereby agrees and consents to Tenant's execution and delivery of the First Lien Leasehold Mortgage, Second Lien Leasehold Mortgage, First Lien Security Agreement, Second Lien Security Agreement, First Lien Pledge Agreement and Second Lien Pledge Agreement (collectively, the

"Collateral Agreements"). Neither the execution and delivery of any of the Collateral Agreement, nor any foreclosure or sale thereunder shall relieve Tenant of any of its obligations under the Lease. Any entry or foreclosure and sale by the First Lien Lenders or Second Lien Lenders shall be a permitted assignment under the Lease not requiring any further consent by Landlord.

3. Subordination of Landlord's Lien as to Personal Property: Landlord hereby subordinates, as to the lien related to First Lien Lender's and Second Lien Lender's security interest only, any lien, right or claim it may now or hereafter possess relative to certain goods and equipment; now or to be installed on or deposited at the above described Premises, provided that:

(a) The Collateral shall remain personal property and not be deemed a fixture whether or not it becomes attached to any real property.

(b) The Collateral may be recovered or repossessed at any time by the Controlling Party, and Landlord will not interfere therewith, regardless of the manner or degree of the attachment of the Collateral to the Premises, provided the Controlling Party provides Landlord with forty-eight (48) hours prior written notice of its intent to remove the Collateral. In the event that such removal creates any type of holes or openings in the roof or exterior of the building, the Controlling Party will immediately repair, close, secure, and seal such holes or openings in such a manner that (a) leaves the building in a secure condition and (b) prevents the intrusion of weather, vermin or other damaging elements into the building and the Controlling Party shall be liable for any and all damage caused to the building by its failure to repair, close, secure, and seal any such holes or openings. Further, the Controlling Party shall be responsible for restoring and repairing to Landlord's reasonable satisfaction any and all damages to the Premises caused by the removal, recovery or repossession of the Collateral, all of which shall be completed within seven (7) days from such removal, recovery or repossession. If such Collateral is not removed within thirty (30) days after Landlord serves the Controlling Party written notice of termination of the Lease, then such Collateral shall be deemed abandoned.

(b) The Controlling Party may enter upon the Premises at any reasonable time in order to inspect the Collateral. If the Premises have been vacated, the Controlling Party shall make arrangements with Landlord prior to inspection.

As used herein, "Controlling Party" means the First Lien Agent, provided, however, that at such time as all obligations owing to First Lien Lenders have been indefeasibly paid in full, all commitment of First Lien Lenders to provide financial accommodations to or for the benefit of the Tenant and its affiliates have terminated, all financing agreements among the First Lien Lenders, the Tenant and its affiliates have terminated and First Lien Agent has provided Landlord with a written notice that First Lien Agent has ceased to be the "Controlling Party" hereunder, "Controlling Party means the Second Lien Agent.

4. Notice to Lender: Landlord agrees that Landlord will use reasonable efforts to deliver to First Lien Agent and Second Lien Agent copies of any notices delivered by Landlord to Tenant under the Lease, provided that the failure by Landlord to provide such notice shall not result in the imposition of liability on the Landlord and shall not effect the rights and remedies of the Landlord against the Tenant under Lease. The Controlling Party shall have the right, but not the obligation, to pay or perform any of Tenant's obligations under the Lease or to cure any default by Tenant thereunder. The Controlling Party shall have, in addition to any cure period provided to Tenant under the Lease, five (5) business days to cure any default of Tenant and the payment of any monetary sums payable by Tenant under the Lease.

5. Notice: All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered by a nationally recognized overnight courier or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Landlord: Power & Ray, L.L.C.  
2425 E. Camelback  
Suite 750  
Phoenix, AZ 85016

with copy to: David L. Lansky, Esq.  
Mariscal, Weeks, McIntyre & Friedlander  
2901 N. Central, Suite 200  
Phoenix, AZ 85012

If to Tenant:

Garden Fresh Restaurant Corp.,  
15822 Bernardo Center Drive, Suite A  
San Diego, CA 92127  
Fax: (858) 675-1043  
Attention: Legal Department

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with copy to:

Michael Wright  
Kirkland & Ellis  
200 East Randolph Drive  
Chicago, Illinois 60601-6603  
Fax: (312) 660-9183

If to First Lien Agent:

General Electric Capital Corporation  
17207 North Perimeter Drive  
Scottsdale, Arizona 85255  
Attention: Collateral Management  
Fax: (480) 585-4500

with a copy to:

Jeffrey G. Moran  
Latham & Watkins LLP  
Sears Tower, Suite 5800  
233 S. Wacker Dr.  
Chicago, Illinois 60606  
Fax: (312) 993-9767

If to Second Lien Agent:

General Electric Capital Corporation  
17207 North Perimeter Drive  
Scottsdale, Arizona 85255  
Attention: Collateral Management  
Fax: (480) 585-4500

with a copy to:

Jeffrey G. Moran  
Latham & Watkins LLP  
Sears Tower, Suite 5800  
233 S. Wacker Dr.  
Chicago, Illinois 60606  
Fax: (312) 993-9767

Any party may change its address for notices by written notice in like manner as provided in this paragraph and such change of address shall be effective seven (7) days after the date notice of such change of address is given. Notice for purposes of this Subordination of Landlord's Lien shall be deemed given when it shall have been received or refused from the U.S. certified or registered mail, or with a nationally recognized overnight courier, by the party who is giving such notice with sufficient postage prepaid.

With respect to any such notice, the parties shall use their best efforts to simultaneously deliver a copy of such notice by facsimile at the appropriate facsimile number above to the other party or parties; provided however, that certified mail or overnight courier delivery shall nevertheless be required to effect proper notice hereunder.

6. In the event of any conflict or inconsistency between the provisions of this Subordination of Landlord's Lien and the Lease Agreement the provisions of the Lease Agreement shall govern.

7. This Subordination of Landlord's Lien shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors, and assigns.

8. This Subordination of Landlord's Lien is made and entered into under, and shall be construed according to, the laws of the State of Arizona, and the exclusive jurisdiction for any action arising hereunder shall be the State of Arizona.

9. This Subordination of Landlord's Lien may not be amended except by a written instrument signed by the parties hereto. Except as provided in the First Lien Leasehold Mortgage or Second Lien Leasehold Mortgage, neither the Lease nor any part of Tenant's interest in the Premises shall be assigned, sublet or otherwise transferred, subordinated in any manner, or terminated by the agreement of Landlord and Tenant without the prior written consent of the First Lien Agent and Second Lien Agent.

10. This Subordination of Landlord's Lien shall not impair, modify or otherwise affect the terms of the Lease, including, without limitation, Tenant's obligations to pay rent and any other sums payable by Tenant pursuant to the terms of the Lease.

[Signatures on next page.]

"LANDLORD"

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Signed, Sealed and Delivered  
in the presence of:

POWER & RAY, LLC, an Arizona  
limited liability company

\_\_\_\_\_  
Name:

By: VESTAR ARIZONA XXX, L.L.C.,  
an Arizona limited liability company  
Its: Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Name:

STATE OF \_\_\_\_\_

\_\_\_\_\_  
County

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_ (name of document signer), proved to me through satisfactory  
evidence of identification, which were personally known, to be the person whose name is signed on the  
preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its  
stated purpose.

\_\_\_\_\_  
(official signature and seal of notary).

My commission expires \_\_\_\_\_

**LENDER:**

Signed, Sealed and Delivered  
in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Name:

By:

\_\_\_\_\_  
Name:

As Its:

\_\_\_\_\_  
Name:

THE COMMONWEALTH OF \_\_\_\_\_

\_\_\_\_\_ County

On this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_ (name of document signer), proved to me through  
satisfactory evidence of identification, which were personally known, to be the person whose name is  
signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it  
voluntarily for its stated purpose.

\_\_\_\_\_ (official signature and seal of notary).

My commission expires \_\_\_\_\_

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TENANT:

Signed, Sealed and Delivered  
in the presence of:

GARDEN FRESH RESTAURANT CORP.

By:

David W. Qualls  
As Its: President/CFO/Secretary

Name: \_\_\_\_\_

Name: \_\_\_\_\_

STATE OF \_\_\_\_\_

\_\_\_\_\_ County

On this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, before me, the undersigned notary public,  
personally appeared \_\_\_\_\_ (name of document signer), proved to me through  
satisfactory evidence of identification, which were personally known, to be the person whose name is  
signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it  
voluntarily for its stated purpose.

\_\_\_\_\_ (official signature and seal of notary).

My commission expires \_\_\_\_\_

**EXHIBIT "F"**  
**FORM OF**  
**LESSEE ESTOPPEL CERTIFICATE**

The undersigned, **GARDEN FRESH RESTAURANT CORP.**, a Delaware corporation, is the lessee ("**Lessee**") under a Lease ("**Lease**") dated May \_\_, 2006 between Lessee and **POWER & RAY, LLC**, an Arizona limited liability company, as lessor ("**Lessor**") with respect to the premises ("**Premises**") commonly referred to as Pad C, Gilbert Gateway Towne Center, Phase I, Gilbert, Arizona. With the understanding that \_\_\_\_\_ ("**Lender**") will rely upon the representations made herein in making a loan ("**Loan**") to Lessor and accepting an assignment of Lessor's interest in the Lease pursuant to an Assignment of Leases and Rents to be entered into between Lender, as assignee, and Lessor, as assignor ("**Assignment of Leases**"), Lessee hereby represents and certifies as follows:

1. The Lease is in full force and effect and has not been modified, supplemented, cancelled or amended in any respect, except as follows: \_\_\_\_\_

2. The Lease, as affected by those changes in Paragraph 1 above, represents the entire agreement of the parties with respect to the Premises.

3. Lessee has accepted the Premises and is the actual occupant in possession and both the Lessor and the Lessee have completed and complied with all required conditions precedent to such acceptance and possession. Lessee has no claims, defenses or rights of offset against any rents payable thereunder. All improvements to be constructed on the Premises have been completed and accepted by Lessee.

4. The term of the Lease commenced on \_\_\_\_\_ and, including any presently exercised option or renewal term, will expire on \_\_\_\_\_ ("**Initial Term**"), with the right to extend the Lease for \_\_\_\_\_ additional period(s) of \_\_\_\_\_ years each, and on or before the first said date the Lessee became obligated to pay fixed minimum rent in monthly installments each in an amount not less than \$\_\_\_\_\_, which rent obligation is continuing and is not past due or delinquent in any respect. No installment of rent or other charges has been prepaid more than one (1) month in advance.

5. As of the date of this Certificate, there exists no breach or default, nor state of facts which, with notice, the passage of time, or both, would result in a breach or default on the part of either Lessee or Lessor. To the best of Lessee's knowledge, no claim, controversy, dispute, quarrel or disagreement exists between Lessee and Lessor.

6. Lessee has no option or preferential right to purchase all or any part of the Premises (or the real property of which the Premises is a part) nor any right or interest with respect to the Premises other than as Lessee under the Lease.

7. Lessee has no option, right of first offer or right of first refusal to lease or occupy any other space within the property of which the Premises are a part, except as follows: \_\_\_\_\_

8. Lessee has no right to renew or extend the terms of the Lease except as follows: \_\_\_\_\_

9. Lessee has no preferential right to parking spaces or storage area except as follows: \_\_\_\_\_

10. There has not been filed by or against Lessee a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or bankruptcy laws with respect to Lessee.

11. The Lease and this Certificate have been duly authorized, executed and delivered by the Lessee and constitute legal, valid and binding instruments enforceable against Lessee in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally.

12. Neither the execution, delivery nor performance of the Lease or this Certificate by Lessee shall violate any applicable law, order, writ, injunction, or decree of any court or governmental authority or result in any default in the terms of any agreement or instrument to which the Lessee is a party or

create any lien, charge or encumbrance upon the Premises except those expressly created or permitted by the Lease.

13. The provisions of the Lease, including the rents payable thereunder, were negotiated at arms length and no consent, authorization or approval of any governmental authority is necessary in connection with Lessee's execution, delivery or performance of the Lease or this Certificate.

14. This Certificate and the representations made herein shall be governed by the laws of Arizona and are binding upon and inure to the benefit of Lender and Lessee and their respective successors and assigns and to no other Persons and the representations made herein shall survive the closing of the Loan and the delivery of this Certificate.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered by the undersigned as of \_\_\_\_\_, 200\_.

GARDEN FRESH RESTAURANT CORP., a  
Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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**EXHIBIT "G"**  
**ARIZONA UNIFORM COMMERCIAL CODE FINANCING STATEMENT-FORM UCC-1**

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

David L. Lansky  
Mariscal, Weeks, McIntyre & Friedlander, P.A.  
2901 N. Central Avenue, Suite 200  
Phoenix, AZ 85012

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

Garden Fresh Restaurant Corp.

OR 1b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

1c. MAILING ADDRESS

15812 Bernardo Center Drive

CITY

San Diego

STATE

CA

POSTAL CODE

92127

COUNTRY

USA

1d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

1e. TYPE OF ORGANIZATION  
corporation

1f. JURISDICTION OF ORGANIZATION  
Delaware

1g. ORGANIZATIONAL ID #, if any

☐ NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

2c. MAILING ADDRESS

CITY

STATE

POSTAL CODE

COUNTRY

2d. TAX ID #: SSN OR EIN

ADD'L INFO RE  
ORGANIZATION  
DEBTOR

2e. TYPE OF ORGANIZATION

2f. JURISDICTION OF ORGANIZATION

2g. ORGANIZATIONAL ID #, if any

☐ NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME

POWER & RAY, LLC

OR 3b. INDIVIDUAL'S LAST NAME

FIRST NAME

MIDDLE NAME

SUFFIX

3c. MAILING ADDRESS

2425 East Camelback Road, Suite 750

CITY

Phoenix

STATE

AZ

POSTAL CODE

85016

COUNTRY

USA

4. This FINANCING STATEMENT covers the following collateral: All of Debtor's fixtures, furniture, equipment, improvements, additions, alterations, inventory and other personal property now or hereafter located within or upon the Premises known as Pad C, Gilbert Gateway Towne Center Phase I, Gilbert, Arizona, owned or hereafter acquired, together with all products and proceeds thereof.

5. ALTERNATIVE DESIGNATION (if applicable): ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2 [optional] [ADDITIONAL FEE] [optional]

8. OPTIONAL FILER REFERENCE DATA  
10381-199/61

FILING OFFICER COPY - NATIONAL UCC FINANCING STATEMENT (FORM UCC1) (REV. 07/29/98)

# Instructions for National UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read all instructions, especially Instruction 1; correct Debtor name is crucial. Follow instructions completely. Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. Filing office cannot give legal advice.

Do not insert anything in the open space in the upper portion of this form; it is reserved for filing office use. When properly completed, send Filing Office Copy, with required fee, to filing office. If you want an acknowledgment, complete item B and, if filing in a filing office that returns an acknowledgment copy furnished by filer, you may also send Acknowledgment Copy; otherwise detach. If you want to make a search request, complete item 7 (after reading instruction 7 below) and send Search Report Copy, otherwise detach. Always detach Debtor and Secured Party Copies.

If you need to use attachments, use 8-1/2 X 11 inch sheets and put at the top of each sheet the name of the first Debtor, formatted exactly as it appears in item 1 of this form; you are encouraged to use Addendum (Form UCC1Ad).

A. To assist filing offices that might wish to communicate with filer, filer may provide information in item A. This item is optional.

B. Complete item B if you want an acknowledgment sent to you. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form a carbon or other copy of this form for use as an acknowledgment copy.

1. Debtor name: Enter only one Debtor name in item 1, an organization's name (1a) or an individual's name (1b). Enter Debtor's exact full legal name. Don't abbreviate.

1a. **Organization Debtor.** "Organization" means an entity having a legal identity separate from its owner. A partnership is an organization; a sole proprietorship is not an organization, even if it does business under a trade name. If Debtor is a partnership, enter exact full legal name of partnership; you need not enter names of partners as additional Debtors. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed charter documents to determine Debtor's correct name, organization type, and jurisdiction of organization.

1b. **Individual Debtor.** "Individual" means a natural person and a sole proprietorship, whether or not operating under a trade name. Don't use prefixes (Mr., Mrs., Ms.). Use suffix box only for titles of lineage (Jr., Sr., III) and not for other suffixes or titles (e.g., M.D.). Use married woman's personal name (Mary Smith, not Mrs. John Smith). Enter individual Debtor's family name (surname) in Last Name box, first given name in First Name box, and all additional given names in Middle Name box. For both organization and individual Debtors: Don't use Debtor's trade name, DBA, AKA, FKA, Division name, etc. in place of or combined with Debtor's legal name; you may add such other names as additional Debtors if you wish (but this is neither required nor recommended).

1c. An address is always required for the Debtor named in 1a or 1b.

1d. Debtor's taxpayer identification number (tax ID #) - social security number or employer identification number - may be required in some states.

1e. f.g. "Additional information re organization Debtor" is always required. Type of organization and jurisdiction of organization as well as Debtor's exact legal name can be determined from Debtor's current filed charter document. Organizational ID #, if any, is assigned by the agency where the charter document was filed; this is different from taxpayer ID #; this should be entered preceded by the 2-character U.S. Postal identification of state of organization if one of the United States (e.g., CA12345, for a California corporation whose organizational ID # is 12345); if agency does not assign organizational ID #, check box in item 1g indicating "none."

Note: If Debtor is a trust or a trustee acting with respect to property held in trust, enter Debtor's name in item 1 and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a decedent's estate, enter name of deceased individual in item 1b and attach Addendum (Form UCC1Ad) and check appropriate box in item 17. If Debtor is a transmitting utility or this Financing Statement is filed in connection with a Manufactured-Home Transaction or a Public-Finance Transaction as defined in applicable Commercial Code, attach Addendum (Form UCC1Ad) and check appropriate box in item 18.

2. If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. To include further additional Debtors, or one or more additional Secured Parties, attach either Addendum (Form UCC1Ad) or other additional page(s), using correct name format. Follow Instruction 1 for determining and formatting additional names.

3. Enter information for Secured Party or Total Assignee, determined and formatted per Instruction 1. If there is more than one Secured Party, see Instruction 2. If there has been a total assignment of the Secured Party's interest prior to filing this form, you may either (1) enter Assignor S/P's name and address in item 3 and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Total Assignee's name and address in item 3 and, if you wish, also attaching Addendum (Form UCC1Ad) giving Assignor S/P's name and address in item 12.

4. Use item 4 to indicate the collateral covered by this Financing Statement. If space in item 4 is insufficient, put the entire collateral description or continuation of the collateral description on either Addendum (Form UCC1Ad) or other attached additional page(s).

5. If filer desires (at filer's option) to use titles of lessee and lessor, or consignee and consignor, or seller and buyer (in the case of accounts or chattel paper), or bailee and bailor instead of Debtor

and Secured Party, check the appropriate box in item 5. If this is an agricultural lien (as defined in applicable Commercial Code) filing or is otherwise not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 5, complete items 1-7 as applicable and attach any other items required under other law.

6. If this Financing Statement is filed as a fixture filing or if the collateral consists of timber to be cut or as-extracted collateral, complete items 1-5, check the box in item 6, and complete the required information (items 13, 14 and/or 15 on Addendum (Form UCC1Ad)).

7. This item is optional. Check appropriate box in item 7 to request Search Report(s) on all or some of the Debtors named in this Financing Statement. The Report will list all Financing Statements on file against the designated Debtor on the date of the Report, including this Financing Statement. There is an additional fee for each Report. If you have checked a box in item 7, file Search Report Copy together with Filing Office Copy (and Acknowledgment Copy). Note: Not all states do searches and not all states will honor a search request made via this form; some states require a separate request form.

8. This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information (e.g., Secured Party's loan number, law firm file number, Debtor's name or other identification, state in which form is being filed, etc.) that filer may find useful.

12 MAY 2014 PM 10:07

**UCC FINANCING STATEMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

**9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT**

9a. ORGANIZATION'S NAME Garden Fresh Restaurant Corp.		
OR	9b. INDIVIDUAL'S LAST NAME	FIRST NAME MIDDLE NAME, SUFFIX

**10. MISCELLANEOUS:**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

**11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one name (11a or 11b) - do not abbreviate or combine names**

11a. ORGANIZATION'S NAME				
OR	11b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
11c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY
11d. TAX ID #: SSN OR EIN	ADD'L INFO RE ORGANIZATION DEBTOR	11e. TYPE OF ORGANIZATION	11f. JURISDICTION OF ORGANIZATION	11g. ORGANIZATIONAL ID #, if any <input type="checkbox"/> NONE

**12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - insert only one name (12a or 12b)**

12a. ORGANIZATION'S NAME				
OR	12b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
12c. MAILING ADDRESS		CITY	STATE	POSTAL CODE COUNTRY

**13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.****14. Description of real estate:**

All of that real property located in the Town of Gilbert, County of Maricopa, State of Arizona more particularly described as follows:

Lot 13, Gilbert Gateway Towne Center, NWC Power Road and Ray Road, shown by map on file in Book 661, Page 44 of Maps, Official Records of Maricopa County, Arizona.

**16. Additional collateral description:****15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):****17. Check only if applicable and check only one box.**Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate**18. Check only if applicable and check only one box.**☐ Debtor is a TRANSMITTING UTILITY☐ Filed in connection with a Manufactured-Home Transaction - effective 30 years☐ Filed in connection with a Public-Finance Transaction - effective 30 years

FILING OFFICE COPY - NATIONAL UCC FINANCING STATEMENT ADDENDUM (FORM UCC1Ad) (REV. 07/29/98)

### Instructions for National UCC Financing Statement Addendum(Form UCC1Ad)

9. Insert name of first Debtor shown on Financing Statement to which this Addendum is related, exactly as shown in item 1 of Financing Statement.
10. Miscellaneous: Under certain circumstances, additional information not provided on Financing Statement may be required. Also, some states have non-uniform requirements. Use this space to provide such additional information or to comply with such requirements; otherwise, leave blank.
11. If this Addendum adds an additional Debtor, complete item 11 in accordance with Instruction 1 on Financing Statement. To add more than one additional Debtor, either use an additional Addendum form for each additional Debtor or replicate for each additional Debtor the formatting of Financing Statement item 1 on an 8-1/2 X 11 inch sheet (showing at the top of the sheet the name of the first Debtor shown on the Financing Statement), and in either case give complete information for each additional Debtor in accordance with Instruction 1 on Financing Statement. All additional Debtor information, especially the name, must be presented in proper format exactly identical to the format of item 1 of Financing Statement.
12. If this Addendum adds an additional Secured Party, complete item 12 in accordance with Instruction 3 on Financing Statement. In the case of a total assignment of the Secured Party's interest before the filing of this Financing Statement, if filer has given the name and address of the Total Assignee in item 3 of the Financing Statement, filer may give the Assignor S/P's name and address in item 12.
- 13-15. If collateral is timber to be cut or as-extracted collateral, or if this Financing Statement is filed as a fixture filing, check appropriate box in item 13; provide description of real estate in item 14; and, if Debtor is not a record owner of the described real estate, also provide, in item 15, the name and address of a record owner. Also provide collateral description in item 4 of Financing Statement. Also check box 6 on Financing Statement. Description of real estate must be sufficient under the applicable law of the jurisdiction where the real estate is located.
16. Use this space to provide continued description of collateral, if you cannot complete description in item 4 of Financing Statement.
17. If Debtor is a trust or a trustee acting with respect to property held in trust or is a decedent's estate, check the appropriate box.
18. If Debtor is a transmitting utility or if the Financing Statement relates to a Manufactured-Home Transaction or a Public-Finance Transaction as defined in the applicable Commercial Code, check the appropriate box.

12 FEB 20 14 PM 11:00

**EXHIBIT "H"**  
**SPECIAL CONSTRUCTION PROVISIONS**

1. Prior to Lessee commencing construction of any improvements on or in the Demised Premises, Lessee shall give Lessor ten (10) days prior written notice of its intent to commence such construction in order that nonresponsibility notices may be posted and recorded as may be provided by applicable law.

2. All construction, alteration, repair, renovation or reconstruction work, undertaken by Lessee within the Shopping Center, shall be performed in a neat, safe and workmanlike manner and shall be accomplished in the most expeditious, diligent and speedy manner possible. Lessee shall take all reasonable measures to minimize any disruption or inconvenience caused by such work to the other lessees and occupants of the Shopping Center and their invitees and customers and shall make adequate provisions for the safety and convenience of all lessees and occupants of the Shopping Center and their invitees and customers. Such work shall be accomplished by Lessee in such a manner so as to minimize any damage or adverse effect, including dust and noise, which might be caused by such work to the other lessees and occupants of the Shopping Center and the affected portion of the Shopping Center and cause as little disruption of and interference with use of the Common Areas and other portions of the Shopping Center as possible. Lessee shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Shopping Center upon which such work is performed to a condition equal to or better than the condition existing prior to beginning such work. In addition, Lessee shall pay all costs and expenses associated therewith and shall promptly discharge any lien relating thereto at such party's expense. Any such work involving the Common Areas or the exterior of any building shall be undertaken only after giving Lessor thirty (30) days prior written notice of the work to be undertaken, the scope, nature and extent of the work, the duration of the work, and the area in which the work is to be performed.

3. Any work performed by Lessee to connect to, repair, relocate, maintain or install any storm drain, utility line, sewer, water line, gas line, telephone conduits or any other public utility service shall be performed so as to minimize interference with the provision of such services to any other lessees or occupants of the Shopping Center. Lessee shall not interfere with any such public utilities and services if such interference would disrupt the orderly development and operation of the businesses conducted by any other lessees or occupants of the Shopping Center on any other portion of the Shopping Center. Lessee shall bear the cost of any overtime or other additional expense necessitated by such request. Any work or installation, alteration, replacement or repair of utility installations which requires interference with the paving in the parking area or driveways in the Common Area shall be undertaken with particular care so as to minimize the impact upon traffic circulation within the Common Area and access of all users to the various business establishments in the Shopping Center.

4. All construction, alteration, repair, renovation or reconstruction work undertaken by Lessee shall comply with any plans and specifications therefor approved pursuant to this Lease, the requirements of all applicable governmental authorities having jurisdiction and all applicable laws, ordinances, rules and regulations of such authorities, including without limitation, zoning laws and building codes. Lessee shall also secure all necessary licenses and permits from governmental bodies and agencies prior to commencing its construction, alteration, repair, renovation or reconstruction work.

5. Except for the initial construction by Lessee of its Building and Improvements, no construction, alteration, repair, renovation, reconstruction or activity, including storage of construction equipment or materials, shall be conducted by Lessee or permitted by Lessee in the Common Areas during the months of October, November and December of any calendar year unless such construction activity is conducted only within an enclosed area without obstruction to any part of the parking areas, driveways, walkways, or accesses, or unless such construction activity is required in connection with emergency repairs or as a result of a casualty and in such instance the construction activity shall be conducted pursuant to the requirements of this Lease.

6. Lessee shall, at its own cost and upon request of Lessor fence off or cause to be fenced off with a construction fence any development, construction, repair, alteration or remodeling work performed by Lessee on any exterior portion of the Shopping Center. Fencing shall be of such construction sufficient to protect existing facilities in the Shopping Center from dust, debris and other inconveniences occasioned by such work, and to protect users from safety hazards resulting from such work.

7. During Lessee's construction, the construction site and surrounding area shall be kept reasonably clean and free of construction material, trash and debris and Lessee shall take appropriate precautions to protect against personal injury and property damage to the owners, other lessees, licensees, permittees or invitees.

EXHIBIT "J"  
SCHEDULE OF PLANS AND SPECIFICATIONS

12 AUG 20 11 47 AM 10:02

List of Civil Drawings  
Gilbert Gateway Towne Center  
NWC Power Rd. & Ray Rd.  
Gilbert, Arizona

SHEET NO.	DESCRIPTION	PREPARED BY	SEAL DATE
GC1	GRADING & DRAINAGE AND STORM DRAIN PLANS COVER SHEET	CMX	5-15-03
GC2	GRADING & DRAINAGE GENERAL NOTES & DETAILS	CMX	2-17-04
GD1	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD2	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD3	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD4	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD5	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD6	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD7	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD8	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD9	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD10	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD11	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD12	GRADING & DRAINAGE PLANS	CMX	2-17-04
GD13	GRADING & DRAINAGE DETAILS	CMX	2-17-04
GD14	STORM DRAIN SECTIONS	CMX	2-17-04
GD15	STORM DRAIN SECTIONS	CMX	2-17-04
UC1	SEWER & WATER PLANS COVER SHEET	CMX	2-17-04
UC2	SEWER & WATER PLANS GENERAL NOTES & DETAILS	CMX	2-17-04
UC3	SEWER & WATER PLANS GENERAL NOTES & DETAILS	CMX	2-17-04
UT1	SITE UTILITY PLANS	CMX	2-17-04
UT2	SITE UTILITY PLANS	CMX	2-17-04
UT3	SITE UTILITY PLANS	CMX	2-17-04
UT4	SITE UTILITY PLANS	CMX	6-29-04
IL01	OFFSITE IRRIGATION PLANS COVER SHEET	CMX	1-8-04
IL02	IRRIGATION PLANS DETAILS	CMX	1-2-04
IL02A	IRRIGATION PLANS DETAILS	CMX	1-2-04
IL03	IRRIGATION PLANS	CMX	6-15-04
IL04	IRRIGATION PLANS	CMX	6-15-04
P1	OFFSITE PAVING PLANS COVER SHEET	CMX	1-2-04
P2	PAVING PLANS GENERAL NOTES & DETAILS	CMX	1-2-04
P3	OFFSITE PAVING PLANS	CMX	1-8-04
P4	OFFSITE PAVING PLANS	CMX	1-8-04
P5	OFFSITE PAVING PLANS	CMX	1-8-04
P6	OFFSITE PAVING PLANS	CMX	1-2-04
P7	OFFSITE PAVING PLANS	CMX	1-2-04
P8	OFFSITE PAVING PLANS	CMX	4-7-05
P9	OFFSITE PAVING PLANS	CMX	1-2-04
P10	PAVING PLANS DETAILS	CMX	1-2-04
SC1	OFFSITE SIGNAGE & STRIPING COVER SHEET	CMX	1-2-04
SC2	SIGNAGE & STRIPING NOTES	CMX	1-2-04
SC3	SIGNAGE & STRIPING NOTES	CMX	1-2-04
SS1	SIGNAGE & STRIPING PLANS	CMX	1-2-04
SS2	SIGNAGE & STRIPING PLANS	CMX	1-2-04
SS3	SIGNAGE & STRIPING PLANS	CMX	1-2-04
SS4	SIGNAGE & STRIPING PLANS	CMX	4-20-05
SS5	SIGNAGE & STRIPING PLANS	CMX	1-2-04
UC1	OFFSITE SEWER & WATER PLANS COVER SHEET	CMX	10-29-03
UC2	OFFSITE SEWER & WATER GENERAL NOTES & DETAILS	CMX	10-7-03
UC3	OFFSITE SEWER & WATER GENERAL NOTES & DETAILS	CMX	10-7-03
UC4	OFFSITE SEWER & WATER GENERAL NOTES & DETAILS	CMX	10-22-03
WL1	OFFSITE WATER PLANS	CMX	1-8-04
WL2	OFFSITE WATER PLANS	CMX	1-8-04
WL3	OFFSITE WATER PLANS	CMX	1-5-04
WL4	OFFSITE WATER PLANS	CMX	1-5-04
SL1	OFFSITE SEWER PLANS	CMX	10-7-03
SL2	OFFSITE SEWER PLANS	CMX	10-7-03

EXHIBIT "K"

12 AUG 20 147. Dept AM1002

FORM OF SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

[SEE ATTACHED]

RECORDING REQUESTED BY AND  
AFTER RECORDING, RETURN TO:

GMAC Commercial Mortgage Corporation  
200 Witmer Road  
Horsham, PA 19044-8015  
Attn: Executive Vice President - Servicing Administration

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

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SUBORDINATION, NON-DISTURBANCE  
AND ATTORNMEN AGREEMENT

This Subordination, Non-Disturbance and Attornment Agreement ("Agreement"), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ among \_\_\_\_\_, not individually, but solely as Trustee for the Certificate Holders of \_\_\_\_\_, Series \_\_\_\_\_ under certain {Pooling/Trust} and Servicing Agreement dated as of \_\_\_\_\_, \_\_\_\_ ("Lender"), by and through GMAC Commercial Mortgage Corporation, a California corporation, its {Master} Servicer under said {Pooling/Trust} and Servicing Agreement, \_\_\_\_\_ a \_\_\_\_\_ ("Landlord"), and \_\_\_\_\_ a \_\_\_\_\_ ("Tenant").

Background

A. Lender is the owner and holder of a deed of trust or mortgage or other similar security instrument (either, the "Security Instrument"), covering, among other things, the real property commonly known and described as \_\_\_\_\_, and further described on Exhibit "A" attached hereto and made a part hereof for all purposes, and the building and improvements thereon (collectively, the "Property").

B. Tenant is the lessee under that certain lease agreement between Landlord and Tenant dated \_\_\_\_\_ ("Lease"), demising a portion of the Property described more particularly in the Lease ("Leased Space").

C. Landlord, Tenant and Lender desire to enter into the following agreements with respect to the priority of the Lease and Security Instrument.

NOW, THEREFORE, in consideration of the mutual promises of this Agreement, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Subordination. Tenant agrees that the Lease, and all estates, options and rights created under the Lease, hereby are subordinated and made subject to the lien and effect of the Security Instrument, as if the Security Instrument had been executed and recorded prior to the Lease.

2. Nondisturbance. Lender agrees that no foreclosure (whether judicial or nonjudicial), deed-in-lieu of foreclosure, or other sale of the Property in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan shall operate to terminate the Lease or Tenant's rights thereunder to possess and use the leased space provided, however, that (a) the term of the Lease has commenced, (b) Tenant is in possession of the premises demised pursuant to the Lease, and (c) the Lease is in full force and effect and no uncured default exists under the Lease.

3. Attornment. Tenant agrees to attorn to and recognize as its landlord under the Lease each party acquiring legal title to the Property by foreclosure (whether judicial or nonjudicial) of the Security Instrument, deed-in-lieu of foreclosure, or other sale in connection with enforcement of the Security Instrument or otherwise in satisfaction of the underlying loan ("Successor Owner"). Provided that the conditions set forth in Section 2 above are met at the time Successor Owner becomes owners of the Property, Successor Owner shall perform all obligations of the landlord under the Leases arising from and after the date title to the Property was transferred to Successor Owner. In no event, however, will any Successor Owner be: (a) liable for any default, act or omission of any prior landlord under the Lease,

(except that Successor Owner shall not be relieved from the obligation to cure any defaults which are non-monetary and continuing in nature, and such that Successor Owner's failure to cure would constitute a continuing default under the Lease); (b) subject to any offset or defense which Tenant may have against any prior landlord under the Lease; (c) bound by any payment of rent or additional rent made by Tenant to Landlord more than 30 days in advance; (d) bound by any modification or supplement to the Lease, or waiver of Lease terms, made without Lender's written consent thereto; (e) liable for the return of any security deposit or other prepaid charge paid by Tenant under the Lease, except to the extent such amounts were actually received by Lender; (f) liable or bound by any right of first refusal or option to purchase all or any portion of the Property; or (g) liable for construction or completion of any improvements to the Property or as required under the Lease for Tenant's use and occupancy (whenever arising). Although the foregoing provisions of this Agreement are self-operative, Tenant agrees to execute and deliver to Lender or any Successor Owner such further instruments as Lender or a Successor Owner may from time to time request in order to confirm this Agreement. If any liability of Successor Owner does arise pursuant to this Agreement, such liability shall be limited to Successor Owner's interest in the Property.

4. Rent Payments; Notice to Tenant Regarding Rent Payments. Tenant agrees not to pay rent more than one (1) month in advance unless otherwise specified in the Lease. After notice is given to Tenant by Lender that Landlord is in default under the Security Instrument and that the rentals under the Lease should be paid to Lender pursuant to the assignment of leases and rents granted by Landlord to Lender in connection therewith, Tenant shall thereafter pay to Lender all rent and all other amounts due or to become due to Landlord under the Lease, and Landlord hereby expressly authorizes Tenant to make such payments to Lender upon reliance on Lender's written notice (without any inquiry into the factual basis for such notice or any prior notice to or consent from Landlord) and hereby releases Tenant from all liability to Landlord in connection with Tenant's compliance with Lender's written instructions.

5. Lender Opportunity to Cure Landlord Defaults. Tenant agrees that, until the Security Instrument is released by Lender, it will not exercise any remedies under the Lease following a Landlord default without having first given to Lender (a) written notice of the alleged Landlord default and (b) the opportunity to cure such default within the time periods provided for cure by Landlord, measured from the time notice is given to Lender. Tenant acknowledges that Lender is not obligated to cure any Landlord default, but if Lender elects to do so, Tenant agrees to accept cure by Lender as that of Landlord under the Lease and will not exercise any right or remedy under the Lease for a Landlord default. Performance rendered by Lender on Landlord's behalf is without prejudice to Lender's rights against Landlord under the Security Instrument or any other documents executed by Landlord in favor of Lender in connection with the Loan.

#### 6. Miscellaneous.

(a) Notices. All notices under this Agreement will be effective only if made in writing and addressed to the address for a party provided below such party's signature. A new notice address may be established from time to time by written notice given in accordance with this Section. All notices will be deemed received only upon actual receipt.

(b) Entire Agreement; Modification. This Agreement is the entire agreement between the parties relating to the subordination and nondisturbance of the Lease, and supersedes and replaces all prior discussions, representations and agreements (oral and written) with respect to the subordination and nondisturbance of the Lease. This Agreement controls any conflict between the terms of this Agreement and the Lease. This Agreement may not be modified, supplemented or terminated, nor any provision hereof waived, unless by written agreement of Lender and Tenant, and then only to the extent expressly set forth in such writing.

(c) Binding Effect. This Agreement binds and inures to the benefit of each party hereto and their respective heirs, executors, legal representatives, successors and assigns, whether by voluntary action of the parties or by operation of law. If the Security Instrument is a deed of trust, this Agreement is entered into by the trustee of the Security Instrument solely in its capacity as trustee and not individually.

(d) Unenforceability. Any provision of this Agreement which is determined by a government body or court of competent jurisdiction to be invalid, unenforceable or illegal shall be ineffective only to the extent of such holding and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

(e) Construction of Certain Terms. Defined terms used in this Agreement may be used interchangeably in singular or plural form, and pronouns cover all genders. Unless otherwise provided herein, all days

from performance shall be calendar days, and a "business day" is any day other than Saturday, Sunday and days on which Lender is closed for legal holidays, by government order or weather emergency.

(f) Governing Law. This Agreement shall be governed by the laws of the State in which the Property is located (without giving effect to its rules governing conflicts of laws).

(g) WAIVER OF JURY TRIAL. TENANT, AS AN INDUCEMENT FOR LENDER TO PROVIDE THIS AGREEMENT AND THE ACCOMODATIONS TO TENANT OFFERED HEREBY, HEREBY WAIVES ITS RIGHT, TO THE FULL EXTENT PERMITTED BY LAW, AND AGREES NOT TO ELECT, A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS AGREEMENT.

(h) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed agreement even though all signatures do not appear on the same document. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their respective obligations hereunder.

IN WITNESS WHEREOF, this Agreement is executed this \_\_\_ day of \_\_\_\_\_, 200\_\_.

**LENDER:**

[insert Trustee's name here], Trustee

By: GMAC Commercial Mortgage Corporation,  
its [Master] Servicer

By: \_\_\_\_\_  
Name:  
Title:

**Lender Notice Address:**

[insert Trustee's name here], Trustee  
c/o GMAC Commercial Mortgage Corporation  
200 Witmer Road  
Horsham, PA 19044  
Attn: Executive Vice President - Servicing Administration

**TENANT:**

[insert Tenant's name here]

By: \_\_\_\_\_  
Name:  
Title:

**Tenant Notice Address:**

[insert Tenant's name here]  
\_\_\_\_\_  
\_\_\_\_\_  
Attn:

**LANDLORD:**

[insert Landlord's name here]

By: \_\_\_\_\_  
Name:  
Title:

**Landlord Notice Address:**  
[insert Landlord's name here]

\_\_\_\_\_  
\_\_\_\_\_  
Attn:

12 AUG 20 14. Dept AM1002

*Notary Acknowledgement for Lender:*

Commonwealth of Pennsylvania :  
:ss  
County of Montgomery :

On this, the \_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and who acknowledged to me that he/she is an officer of GMAC Commercial Mortgage Corporation in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

{seal}

*Notary Acknowledgement for Tenant:*

State of \_\_\_\_\_ :  
:ss  
County of \_\_\_\_\_ :

On this, the \_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is an officer of the Tenant in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

{seal}

*Notary Acknowledgement for Landlord:*

State of \_\_\_\_\_ :  
:ss  
County of \_\_\_\_\_ :

On this, the \_\_ day of \_\_\_\_\_, 200\_\_, before me, the undersigned Notary Public, personally appeared \_\_\_\_\_ known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and who acknowledged to me that he/she is an officer of the Landlord in the capacity stated and that he/she executed the within instrument in such capacity for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

{seal}

*Exhibit "A"*  
*(Legal Description of the Property)*

EXHIBIT L

12 AUG 20 11:47:10 PM 1002

FORM OF CERTIFICATE OF INSURANCE



12 AUG 20 10:47 AM #11000

FIRST AMENDMENT TO GILBERT GATEWAY TOWNE CENTER  
PHASE I GROUND LEASE

THIS FIRST AMENDMENT TO GILBERT GATEWAY TOWNE CENTER PHASE I GROUND LEASE (this "Amendment") is made and entered into as of this \_\_\_\_ day of August, 2007 by and between POWER & RAY, L.L.C., an Arizona limited liability company ("Lessor") and GARDEN FRESH RESTAURANT CORP., a Delaware corporation ("Lessee").

RECITALS:

A. Lessor and Lessee have previously executed and delivered that certain Gilbert Gateway Towne Center Phase I Ground Lease dated May 30, 2006 (the "Lease") with respect to certain Demised Premises more particularly described therein.

B. Lessor and Lessee have agreed to modify the Lease, subject to and in accordance with the further terms, covenants and provisions of this Amendment.

NOW, THEREFORE, in consideration of the execution and delivery of the Lease, the foregoing Recitals, the mutual agreements, covenants and promises contained in this Amendment and other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, Lessor and Lessee agree as follows:

1. Definitions. Capitalized terms used in this Amendment without definition shall have the meanings assigned to such terms in the Lease, unless the context expressly requires otherwise.

2. Demised Premises. The definition of Demised Premises as stated in §1.01 of the Lease shall be amended and restated in its entirety as follows:

"Demised Premises. The real property, exclusive of the Building and Improvements, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference, consisting of approximately 42,744 square feet and depicted as "Pad C" on the Site Plan, together with the easements, rights, privileges and appurtenances thereto."

3. Full Force and Effect. Except as expressly modified by this Amendment, the Lease remains unmodified and in full force and effect. All references in the Lease to "this Lease" shall be deemed references to the Lease as modified by this Amendment.

4. Counterparts; Facsimile Signatures. This Amendment may be executed in one or more counterparts and the signature pages combined to constitute one document. Facsimile signatures shall have the same force and effect as original signatures.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

110-011 110112

IN WITNESS WHEREOF, Lessor and Lessee have executed this Amendment as of the date and year first above written.

**LESSOR:**

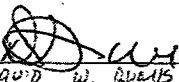
POWER & RAY, L.L.C.,  
an Arizona limited liability company

By: Vestar Arizona XXX, L.L.C.,  
an Arizona limited liability company  
Its: Managing Member

By:   
Name: \_\_\_\_\_  
Its: MEMBER

**LESSEE:**

GARDEN FRESH RESTAURANT CORP.,  
a Delaware corporation

By:   
Name: DAVID W. QUALLS  
Its: CEO

### SECTION 13 - continued

7. Has a license or a transfer license for the premises on this application been denied by the state within the past one (1) year? ☐ YES ☒ NO If yes, attach explanation. 12 AUG 20 11 41 AM #1000
8. Does any spirituous liquor manufacturer, wholesaler, or employee have any interest in your business? ☐ YES ☒ NO
9. Is the premises currently licensed with a liquor license? ☐ YES ☒ NO If yes, give license number and licensee's name:

License # N/A (exactly as it appears on license) Name N/A

### SECTION 14 Restaurant or hotel/motel license applicants:

1. Is there an existing restaurant or hotel/motel liquor license at the proposed location? ☐ YES ☒ NO  
If yes, give the name of licensee, Agent or a company name:

N/A and license #: N/A  
Last First Middle

2. If the answer to Question 1 is YES, you may qualify for an Interim Permit to operate while your application is pending; consult A.R.S. § 4-203.01; and complete SECTION 5 of this application.
3. All restaurant and hotel/motel applicants must complete a Restaurant Operation Plan (Form LIC0114) provided by the Department of Liquor Licenses and Control.
4. As stated in A.R.S. § 4-205.02.G.2, a restaurant is an establishment which derives at least 40 percent of its gross revenue from the sale of food. Gross revenue is the revenue derived from all sales of food and spirituous liquor on the licensed premises. By applying for this ☐ hotel/motel ☒ restaurant license, I certify that I understand that I must maintain a minimum of 40 percent food sales based on these definitions and have included the Restaurant Hotel/Motel Records Required for Audit (form LIC 1013) with this application.

Natalie Ben...  
applicant's signature

As stated in A.R.S. § 4-205.02 (B), I understand it is my responsibility to contact the Department of Liquor Licenses and Control to schedule an inspection when all tables and chairs are on site, kitchen equipment, and, if applicable, patio barriers are in place on the licensed premises. With the exception of the patio barriers, these items are not required to be properly installed for this inspection. Failure to schedule an inspection will delay issuance of the license. If you are not ready for your inspection 90 days after filing your application, please request an extension in writing, specify why the extension is necessary, and the new inspection date you are requesting. To schedule your site inspection visit [www.azliquor.gov](http://www.azliquor.gov) and click on the "Information" tab.

NA  
applicant's initials

### SECTION 15 Diagram of Premises: (Blueprints not accepted, diagram must be on this form)

1. Check ALL boxes that apply to your business:

☒ Entrances/Exits ☒ Liquor storage areas Patio: ☒ Contiguous  
☐ Service windows ☐ Drive-in windows ☐ Non Contiguous

2. Is your licensed premises currently closed due to construction, renovation, or redesign? ☐ YES ☒ NO  
If yes, what is your estimated opening date? N/A  
month/day/year

3. Restaurants and hotel/motel applicants are required to draw a detailed floor plan of the kitchen and dining areas including the locations of all kitchen equipment and dining furniture. Diagram paper is provided on page 7.
4. The diagram (a detailed floor plan) you provide is required to disclose only the area(s) where spiritous liquor is to be sold, served, consumed, dispensed, possessed, or stored on the premises unless it is a restaurant (see #3 above).
5. Provide the square footage or outside dimensions of the licensed premises. Please do not include non-licensed premises, such as parking lots, living quarters, etc.

As stated in A.R.S. § 4-207.01(B), I understand it is my responsibility to notify the Department of Liquor Licenses and Control when there are changes to boundaries, entrances, exits, added or deleted doors, windows or service windows, or increase or decrease to the square footage after submitting this initial drawing.

NA  
applicant's initials

**SECTION 15 Diagram of Premises**

4. In this diagram please show only the area where spirituous liquor is to be sold, served, consumed, dispensed, possessed or stored. It must show all entrances, exits, interior walls, bars, bar stools, hi-top tables, dining tables, dining chairs, the kitchen, dance floor, stage, and game room. Do not include parking lots, living quarters, etc. When completing diagram, North is up ↑.

If a legible copy of a rendering or drawing of your diagram of premises is attached to this application, please write the words "diagram attached" in box provided below.

*See attached*

12 MAY 2014 PM 10:00

**SECTION 16 Signature Block**

I, Natalie Burtzlar, hereby declare that I am the OWNER/AGENT filing this application as stated in Section 4, Question 1. I have read this application and verify all statements to be true, correct and complete.

x Natalie Burtzlar  
(signature of applicant listed in Section 4, Question 1)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

See attached \_\_\_\_\_ of \_\_\_\_\_  
Day Month Year

My commission expires on : \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
signature of NOTARY PUBLIC

12 AUG 20 11:47:38 AM 1000

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Bernardino

On 8-14-12 before me, Kathleen E. Salerno

Here Insert Name and Title of the Officer

personally appeared Natolie Burt Lohr

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public

Place Notary Seal Above

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: Liquor License Application in A2

Document Date: \_\_\_\_\_ Number of Pages: 8

Signer(s) Other Than Named Above: None

#### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

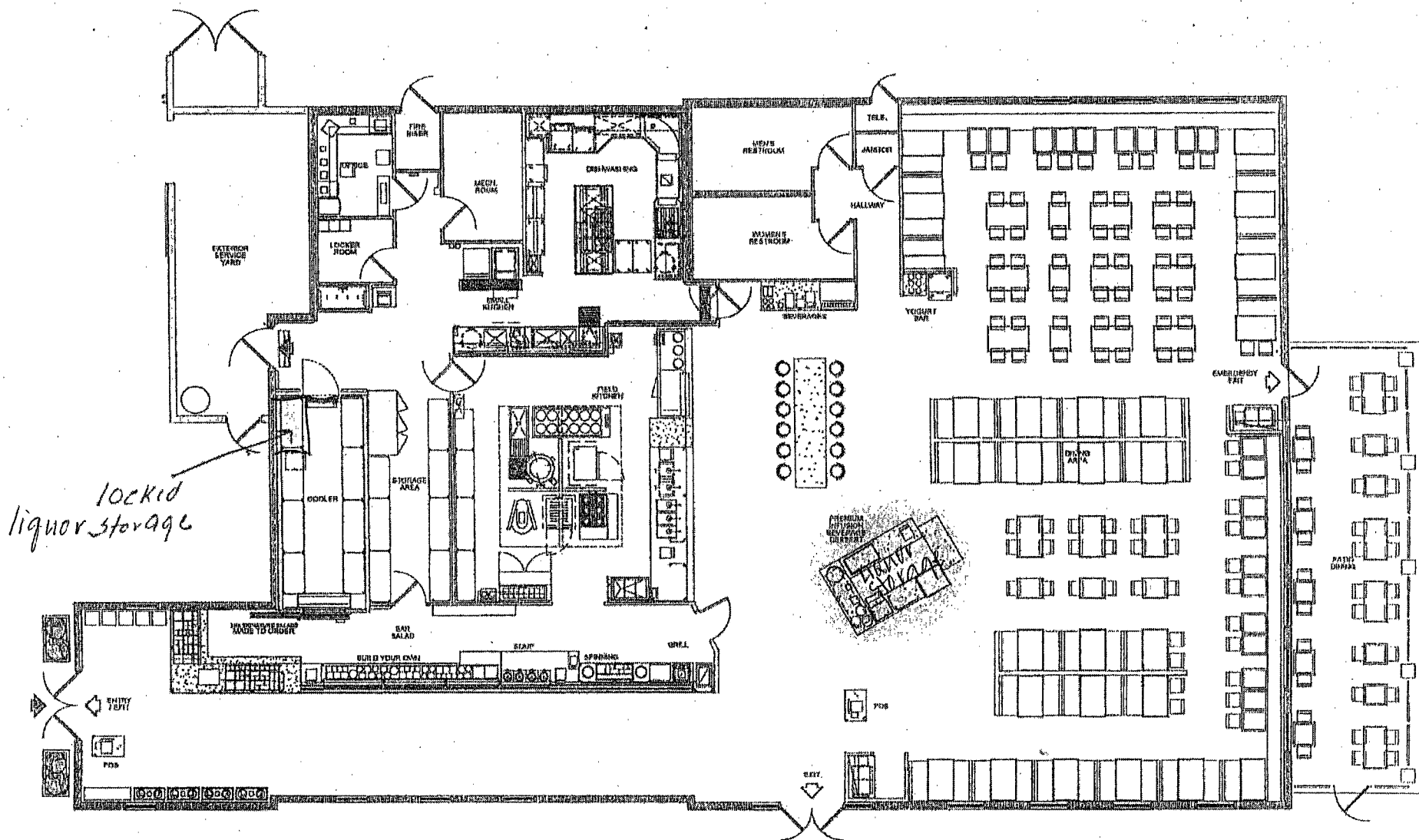
RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer's Name: \_\_\_\_\_

- ☐ Individual  
☐ Corporate Officer — Title(s): \_\_\_\_\_  
☐ Partner — ☐ Limited ☐ General  
☐ Attorney in Fact  
☐ Trustee  
☐ Guardian or Conservator  
☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here



GENERAL ARRANGEMENT PLAN  
12 AUG 24 149. L.C. PM1239

#110 Gilbert  
Room 59 Ft

12 AUG 24 149. L.C. PM1239

N  
↑

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

12 AUG 20 11:47 AM 2010

## QUESTIONNAIRE

802-868  
P1000943

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079241

(If the location is currently licensed)

1. Check appropriate box → ☐ Controlling Person (Complete Questions 1-19) ☒ Agent (Complete All Questions except # 14, 14a & 21) Controlling Person or Agent must complete #21 for a Manager ☐ Manager (Only) Controlling Person or Agent must complete # 21

2. Name: Lahr Natalie Burt Date of Birth \_\_\_\_\_  
Last First Middle (NOT a Public Record)

3. Social Security Number \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: AZ  
(NOT a public record) (NOT a public record)

4. Place of Birth: El Paso Texas US Height: 5'5" Weight: 145 Eyes: Brown Hair: Brown  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: Lahr Chad Date of Birth \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? Arizona If Arizona, date of residency: 1993

8. Telephone number to contact you during business hours for any questions regarding this document. \_\_\_\_\_

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes II Premises Phone: 480 333 0022

11. Physical Location of Licensed Premises Address: 4928 S. Power Rd Mesa Maricopa 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
04/96	CURRENT	Director of Operations	15822 Bernardo Ct Drive San Diego CA 92127

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address (If rented, attach additional sheet with name, address and phone number of landlord)	City	State	Zip
04/96	CURRENT	own	_____	_____	_____	_____

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises? ☐ YES ☒ NO  
If you answered YES, how many hrs/day? \_\_\_\_\_, and **answer #14a below.** If NO, skip to #15.  
14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof) ☒ YES ☐ NO  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

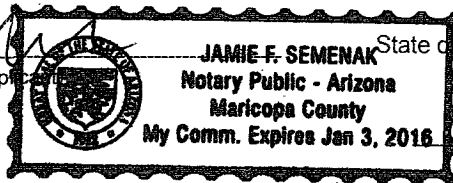
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?  
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. ☐ YES ☒ NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. ☐ YES ☒ NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? ☐ YES ☒ NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.  
Give complete details including dates, agencies involved, and dispositions.

**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

20. I, Natalie Lahr, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X Natalie Lahr (Signature of Applicant) State of AZ County of Maricopa  
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of AUGUST, 2012  
Month Year  
My commission expires on: 1-3-16 Day Month Year  
(Signature of NOTARY PUBLIC)



**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT  
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.  
The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

X \_\_\_\_\_ day of \_\_\_\_\_  
Signature of Controlling Person or Agent (circle one) Month Year

Print Name

(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_  
Day Month Year

FILE AUG 20 11 47 AM '00

I, Natalie Cahr, was a manager on a  
liquor license in Arizona around 1994-1995  
at Chili's on Elliot Rd. in Tempe Az.

Natalie Cahr

Natalie Cahr

12 AUG 20 10:01 AM 6/19



# ARIZONA STATEMENT OF CITIZENSHIP AND ALIEN STATUS FOR STATE PUBLIC BENEFITS

Professional License and Commercial License  
Department of Liquor Licenses and Control

Liquor License #: 12079241

Ownership Name: GARDEN FRESH RESTAURANT CORP.  
(as listed on the current liquor license application or renewal application)

Title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Act"), 8 U.S.C. § 1621, provides that, with certain exceptions, only United States citizens, United States non-citizen nationals, non-exempt "qualified aliens" (and sometimes only particular categories of qualified aliens), nonimmigrants, and certain aliens paroled into the United States are eligible to receive state or local public benefits. With certain exceptions, a professional license and commercial license issued by a State agency is a State public benefit.

Arizona Revised Statutes § 1-501 requires, in general, that a person applying for a license must submit documentation to the licensing agency that satisfactorily demonstrates that the applicant is lawfully present in the United States.

Directions: All applicants must complete Sections I, II, and IV. Applicants who are not U.S. citizens or nationals must also complete Section III. Submit this completed form and copy of one or more documents that evidence your citizenship or alien status with your application for license or renewal.

## SECTION I - APPLICANT INFORMATION

APPLICANT'S NAME (Print or type) Natahe Burt Lahr DATE 8-17-12  
*For Garden Fresh Restaurant Corp. dba Sweet Tomatoes*  
TYPE OF APPLICATION (check one) ☒ INITIAL APPLICATION ☐ RENEWAL  
TYPE OF LICENSE Restaurant Series 12

## SECTION II - CITIZENSHIP OR NATIONAL STATUS DECLARATION

Directions: Attach a legible copy of the front, and the back (if any), of a document from the attached List A or other document that demonstrates U.S. citizenship or nationality. Name of document provided: Passport

- A. Are you a citizen or national of the United States? (check one) ☒ Yes ☐ No
- B. If the answer is "Yes," where were you born? List city, state (or equivalent), and country.  
City EL PASO State (or equivalent) TEXAS Country or Territory USA

If you are a citizen or national of the United States, go to Section IV. If you are not a citizen or national of the United States, please complete Sections III and IV.

12 AUG 20 14:47:00 AM 9/19

**SECTION IV DECLARATION**

**All applicants must complete this section.** I declare under penalty of perjury under the laws of the state of Arizona that the answers I have given are true and correct to the best of my knowledge.

Nalini Burt Sahr  
APPLICANT'S SIGNATURE

8.17.2018  
TODAY'S DATE

*The Secretary of State of the United States of America  
hereby requests all whom it may concern to permit the citizen/national  
of the United States named herein to pass without delay or hindrance  
and in case of need to give all lawful aid and protection.*

*Le Secrétaire d'Etat des Etats-Unis d'Amérique  
prie par les présentes toutes autorités compétentes de laisser passer le citoyen  
ou ressortissant des Etats-Unis titulaire du présent passeport, sans délai ni  
difficulté et, en cas de besoin, de lui accorder toute aide et protection légitimes.*

*El Secretario de Estado de los Estados Unidos de América por el presente solicita a las  
autoridades competentes permitir el paso del ciudadano o nacional de los Estados Unidos  
aquí nombrado, sin demora ni dificultades, y en caso de necesidad, prestarle toda la  
ayuda y protección lícitas.*

*Natalie Burt Lahr*

SIGNATURE OF BEARER/SIGNATURE DU TITULAIRE/FIRMA DEL TITULAR

NOT VALID UNTIL SIGNED

PASSPORT  
PASSEPORT  
PASAPORTE



UNITED STATES OF AMERICA

Type / Type / Tipo Code / Code / Código Passport No. / No. du Passeport / No. de Pasaporte  
P USA 217492132

Surname / Nom / Apellidos  
LAHR

Given names / Prénoms / Nombres  
NATALIE BURT

Nationality / Nationalité / Nacionalidad  
UNITED STATES OF AMERICA

Date of birth / Date de naissance / Fecha de nacimiento

Sex / Sexe / Sexo Place of birth / Lieu de naissance / Lugar de nacimiento  
F TEXAS, U.S.A.

Date of issue / Date de délivrance / Fecha de expedición  
07 Apr 2006

Authority / Autorité / Autoridad  
United States

Date of expiration / Date d'expiration / Fecha de caducidad  
06 Apr 2016

Department of State

Amendments / Modifications / Enmiendas  
See Page 24

12 MAR 20 149. 1997 MAR 13

## Arizona Department of Liquor Licenses and Control

800 West Washington, 5th Floor 12 AUG 20 11:09 AM '12

Phoenix, Arizona 85007

www.azliquor.gov

602-542-5141

## CERTIFICATE OF TITLE 4 TRAINING COMPLETION

Do Not Duplicate This Form

Certificates must be completed by a state-approved training course provider, in black ink, on an original form.

Natalie Burt Lahr

Full Name (please print)

Natalie Lahr

Signature

8/01/2012

Training Completion Date

8-1-2017

Certificate Expiration Date

(MANAGEMENT - 5 years from completion date)

(BASIC - 3 years from completion date)

Type of Training Completed (check Yes or No)

☒ Yes☐ No

BASIC

☒ Yes☐ No

ON SALE

☒ Yes☐ No

MANAGEMENT

☒ Yes☐ No

OFF SALE

☒ Yes☐ No

BOTH

☐ Yes☒ No

OTHER

If Trainee Is Employed By A Licensee

Natalie Lahr

Name of Licensee

Sweet Tomatoes

Business Name

Liquor License #

## Alcohol Training Program Provider Information

Arizona Alcohol Traffic &amp; Firearms

Company or Individual Name (please print)

P.O. Box 6252

Address

Chandler

City

AZ

State

85246

Zip

( 888 )

723

7078

Daytime Contact Phone #

I certify the above named individual has successfully completed the training specified above in accordance with Arizona Revised Statute, Arizona Administrative Code, and the training course curriculum approved by the Department of Liquor Licenses and Control:

Jared Repinski

Name of Trainer (please print)

Trainer Signature

8-1-2012

Date

Pursuant to A.R.S. § 4-112(G)(2), mandatory Title 4 liquor law training is required prior to the issuance of all new liquor license applications submitted after November 1, 1997.

The persons(s) required to attend both the BASIC and MANAGEMENT Title 4 liquor law training, on- or off-sale, will include all of the following:

Owner(s)

Licensee/agent or manager(s) actively involved in daily business operation

A valid (not expired) Certificate of Title 4 Training Completion must be submitted to the Department of Liquor Licenses and Control before a liquor license application is considered complete.

Before acceptance of a manager's questionnaire and/or agent change for an existing liquor license, proof of attendance for the BASIC and MANAGEMENT Title 4 liquor law training (on- or off-sale) is required.

12 AUG 20 11:47 AM Dept 10003

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

## QUESTIONNAIRE

802-868  
P1066580 JB

**Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.**

Read carefully. This instrument is a sworn document. Type or print with BLACK INK.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

**Liquor License #**

12079241

(If the location is currently licensed)

1. Check appropriate box → ☒ Controlling Person (Complete Questions 1-19) ☐ Agent (Complete All Questions except # 14, 14a & 21) ☐ Manager (Only) (Complete All Questions except # 14, 14a & 21)  
Controlling Person or Agent must complete #21 for a Manager

2. Name: GORONKIN DAVID Date of Birth: \_\_\_\_\_  
Last First Middle (NOT a Public Record)

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: CA  
(NOT a public record) (NOT a public record)

4. Place of Birth: ROCHESTER NY USA Height: 6'1 Weight: 235 Eyes: HZ Hair: BRN  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: GORONKIN JOLEEN K FLEAY Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? CA If Arizona, date of residency: \_\_\_\_\_

8. Telephone number to contact you during business hours for any questions regarding this document. \_\_\_\_\_

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes #110 Premises Phone: 480 333 0022

11. Physical Location of Licensed Premises Address: 4928 S Power Rd Mesa Maricopa 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
6/12	CURRENT	CEO	GARDEN FRUIT RESTAURANT CORP 15822 BERNADO CA DR SAN DIEGO CA 92127
5/11	5/12	CEO	REAL MEX RESTAURANTS 5660 KATELLO AVE, CYPRESS CA 90630
5/09	5/11	CEO	BEHAVIORAL FRANCHISE COMPANY 5151 BERTHOLO RD DALLAS TX 75254

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address (If rented, attach additional sheet with name, address and phone number of landlord)	City	State	Zip
5/11	CURRENT	R	_____	_____	_____	_____
5/9	5/11	R	2408 VICTORY PARK LN DALLAS TX	DALLAS	TX	75219
12/07	5/9	O	8783 LAKE RIDGE DRIVE	(HAWAIIAN)	MA	55317

David Goronkin  
Employers Addendum

12/2008-5/2009	Not Employed	2408 Victory Park Lane Dallas, TX 75219
11/2007-11/2008	CEO	Redstone American Grill 7636 Executive Drive Eden Prairie, MN 55344
5/2003-11/2007	CEO	Famous Dave's of America 12701 Whitewater Dr Minnetonka, MN 55343

12 AUG 21 11:41 AM '12

To: Arizona Department of Liquor Licenses and Control

12 AUG 20 04. 10:04 AM

Landlord Contact Information

2408 Victory Park Lane

Randy Wagner

76 Cedar Street #506

Seattle, WA 98121

214-770-8789

412 Arenoso Lane

R & T Investments

51 W Center #604

Orem, UT 84057

801-592-1740

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?  
If you answered YES, how many hrs/day? \_\_\_\_\_, and **answer #14a below**. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. ☐ YES ☒ NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?  
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. ☐ YES ☒ NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. ☐ YES ☒ NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? ☐ YES ☒ NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.  
Give complete details including dates, agencies involved, and dispositions.

**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

20. I, DAVID GORVITZ, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X

(Signature of Applicant)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this  
day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_

Day Month Year

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT  
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.  
The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

(Signature of NOTARY PUBLIC)

X

Signature of Controlling Person or Agent (circle one)

Print Name

My commission expires on: \_\_\_\_\_

Day Month Year

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

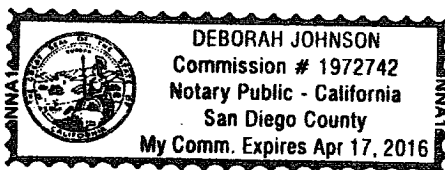
State of California

County of San Diego

On 8/14/12  
Date

before me, Deborah Johnson Notary Public  
Here Insert Name and Title of the Officer

personally appeared David Geronkin  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Deborah Johnson  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: AZiglec Guarantouare (#110 Gilbert)

Document Date: 8/14/12

Number of Pages: 2

Signer(s) Other Than Named Above: -

### Capacity(ies) Claimed by Signer(s)

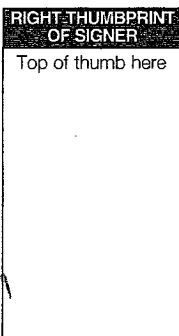
Signer's Name: David Geronkin

Signer's Name: \_\_\_\_\_

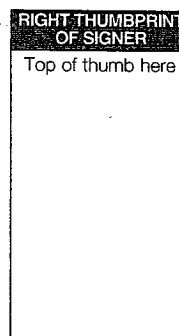
☒ Corporate Officer — Title(s): CEO

☐ Corporate Officer — Title(s): \_\_\_\_\_

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_



- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_



Signer Is Representing: Gordon Fresh Restaurant Corp

Signer Is Representing: \_\_\_\_\_

To: Arizona Department of Liquor Licenses and Control

12 AUG 20 11 47. 2PT #11034

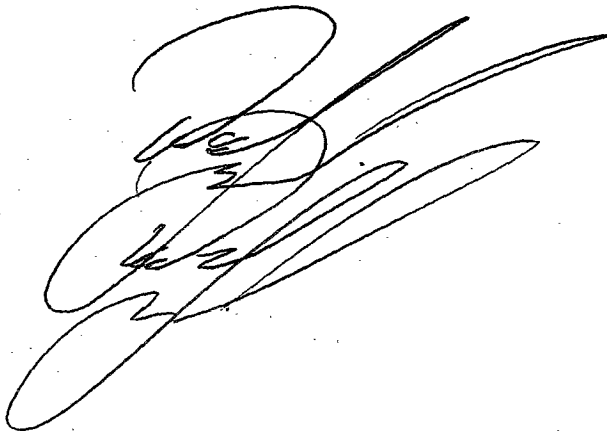
Statement pertaining to Question # 19

As CEO of Real Mex Restaurants from May, 2011 through May 2012, I was listed as an officer to the holding company that owned Chevy's Fresh Mex Restaurants with locations in Arizona that held liquor licenses as well as licenses for other brands such as El Torito, Acapulco, and Las Brisas in states across the US.

As CEO of Famous Dave's of America from May 2003 through November 2007, I was listed as an officer to the company that owned Famous Dave's Restaurants and held liquor licenses throughout the US.

As a past Board Member (2005 - 2008) and CEO of Redstone American Grill ( 2007 - 2008) and current minority owner of this 7 unit restaurant chain operating in Minnesota, Illinois and New Jersey, I was listed as an officer on the liquor licenses in these states.

As CEO of Bennigan's Franchising Company from May, 2009 through May 2011, I was listed as an officer of the company that owned a Bennigan's Restaurant with a liquor license in Wisconsin.

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

## QUESTIONNAIRE

802-868

P1067779 JB

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be **blocked to be unreadable** prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079241

(If the location is currently licensed)

1. Check appropriate box → ☒ Controlling Person (Complete Questions 1-19) ☐ Agent (Complete All Questions except # 14, 14a & 21) ☐ Manager (Only) (Complete All Questions except # 14, 14a & 21)  
Controlling Person or Agent must complete #21 for a Manager

2. Name: Heller Robert G Date of Birth: \_\_\_\_\_ (NOT a Public Record)  
Last First Middle

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: CALIFORNIA  
(NOT a public record) (NOT a public record)

4. Place of Birth: Detroit MICHIGAN USA Height: 5'9 Weight: 170 Eyes: HLL Hair: GRAY  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: Heller Patricia P Perin Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? CALIFORNIA If Arizona, date of residency: \_\_\_\_\_

8. Telephone number to contact you during business hours for any questions regarding this document. \_\_\_\_\_

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes #110 Premises Phone: 480 333-0022

11. Physical Location of Licensed Premises Address: 4928 S Power Rd Mesa Maricopa 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
8/07	CURRENT	President	Garden Fresh Restaurant Corp 15822 Bernardo Center Dr Ste A San Diego CA 92127

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord	City	State	Zip
12/99	CURRENT	OWN	_____	_____	_____	_____

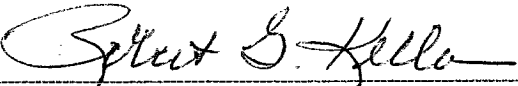
If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?  
If you answered YES, how many hrs/day? \_\_\_\_\_, and **answer #14a below**. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. ☐ YES ☒ NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?  
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. ☒ YES ☐ NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. ☐ YES ☒ NO
17. Have you or any entity in which you have held ownership; been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? ☐ YES ☒ NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.  
Give complete details including dates, agencies involved, and dispositions.

**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

20. I, Robert B Keller, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

x   
(Signature of Applicant)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_  
Day Month Year

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT  
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.  
The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

x \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Signature of Controlling Person or Agent (circle one) Month Year

(Signature of NOTARY PUBLIC)

Print Name

My commission expires on: \_\_\_\_\_  
Day Month Year

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

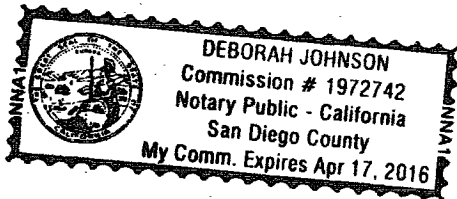
CIVIL CODE § 1189

State of California

County of San Diego

On Aug 14 2012 before me, Deborah Johnson, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Robert G. Keller  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Deborah Johnson  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: AZ lig. lic. questionnaire (#110 Gilbert)

Document Date: 8/14/12 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: Robert G. Keller

☒ Corporate Officer — Title(s): President

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

RIGHT-THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: Garden Fresh Restaurant Corp.

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

RIGHT-THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: \_\_\_\_\_

12 AUG 20 14r. 3pt 9/10/04

To: Arizona Department of Liquor License & Control

Question #15 Addendum:

2006 – Approximately May – Speeding ticket. Maricopa County (Phoenix) Arizona; Paid fine.

2007 – Approximately July – Left turn on red light. Los Angeles, California; Paid fine

Question #19 Addendum:

Held liquor licenses as an Officer of the Company (Garden Fresh Restaurant Corp.) in the following states:

California

Arizona

Florida

Illinois

All licenses have since been terminated.

R. Gregory Keller

A handwritten signature in black ink, appearing to read "R. Gregory Keller", with a long horizontal flourish extending to the right.

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

## QUESTIONNAIRE

802-868  
P1067780 JB

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079241

(If the location is currently licensed)

1. Check appropriate box → ☒ Controlling Person (Complete Questions 1-19) ☐ Agent (Complete All Questions except # 14, 14a & 21) ☐ Manager (Only) (Complete All Questions except # 14, 14a & 21)  
Controlling Person or Agent must complete #21 for a Manager

2. Name: MORBERG JOHN DAVID Date of Birth: (NOT a Public Record)  
Last First Middle

3. Social Security Number: (NOT a public record) Drivers License #: (NOT a public record) State: CA

4. Place of Birth: Inglewood CA USA Height: 5'10" Weight: 197 Eyes: Blue Hair: Brown  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: MORBERG KATHRYN F POLI Date of Birth: (NOT a public record)  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden

7. You are a bona fide resident of what state? CA If Arizona, date of residency:

8. Telephone number to contact you during business hours for any questions regarding this document.

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes #110 Premises Phone: 480 333-0022

11. Physical Location of Licensed Premises Address: 4928 S. Power Rd Mesa Maricopa 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
01/2007	CURRENT	CFO & Gen'l Counsel	GARDEN FRESH RESTAURANT CORP 15822 Bernardo Center Dr Ste A San Diego, CA 92127

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↑

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord	City	State	Zip
07/2004	CURRENT	Own	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?  
If you answered YES, how many hrs/day? \_\_\_\_\_, and **answer #14a below**. If NO, skip to #15. ☐ YES ☒ NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. ☐ YES ☒ NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?  
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related. ☐ YES ☒ NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. ☐ YES ☒ NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? ☐ YES ☒ NO
19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☒ YES ☐ NO

If any answer to Questions 15 through 19 is "YES" **YOU MUST** attach a signed statement.  
Give complete details including dates, agencies involved, and dispositions.

**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

20. I, John David Morberg, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

X

(Signature of Applicant)

(Signature of Applicant)

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

10 day of September, \_\_\_\_\_  
Month Year

(Signature of NOTARY PUBLIC)

My commission expires on:

\_\_\_\_\_  
Day Month Year

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT  
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.  
The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this

\_\_\_\_\_  
day of \_\_\_\_\_  
Month Year

(Signature of NOTARY PUBLIC)

X

Signature of Controlling Person or Agent (circle one)

\_\_\_\_\_  
Print Name

My commission expires on:

\_\_\_\_\_  
Day Month Year

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

12 AUG 20 11:41 AM 201004

CIVIL CODE § 1189

State of California

County of San Diego

On Aug 14, 2012 before me, Deborah Johnson Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared John D. Morberg  
Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Deborah Johnson  
Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document: A2 liquor license questionnaire (gilbert #110)

Document Date: 8/14/12 Number of Pages: 2

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: John D. Morberg

☒ Corporate Officer — Title(s): CEO

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing: Garden  
Fresh Restaurant  
Corp.

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_

- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: \_\_\_\_\_

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

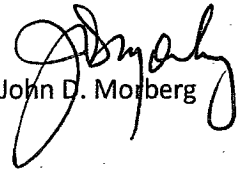
Signer Is Representing: \_\_\_\_\_

\*12 AUG 20 147. DEPT 901004

To: Arizona Department of Liquor License & Control

Question #19 Addendum:

From approximately December 1, 2008 through April 29, 2011 was documented as CFO of Garden Fresh Restaurant Corp. for a Beer & Wine License with the Illinois Department of Liquor Control Commission.

  
John D. Morberg

# ARIZONA DEPARTMENT OF LIQUOR LICENSES & CONTROL

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

## QUESTIONNAIRE

802-868  
P1067781 JB

Attention all Local Governing Bodies: Social Security and Birthdate information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be **blocked to be unreadable** prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with **BLACK INK**.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079241

(If the location is currently licensed)

1. Check appropriate box → ☒ Controlling Person (Complete Questions 1-19) ☐ Agent (Complete Questions 1-19) ☐ Manager (Only) (Complete All Questions except # 14, 14a & 21)  
Controlling Person or Agent must complete #21 for a Manager Controlling Person or Agent must complete # 21

2. Name: Salerno Kathleen Elizabeth Date of Birth: \_\_\_\_\_  
Last First Middle (NOT a Public Record)

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: California  
(NOT a public record) (NOT a public record)

4. Place of Birth: Rockford IL USA Height: 5'6" Weight: 120 Eyes: Br Hair: Br  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: Salerno Guy Michael Date of Birth: \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? California If Arizona, date of residency: na

8. Telephone number to contact you during business hours for any questions regarding this document. \_\_\_\_\_

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes #110 Premises Phone: 480 333 0022

11. Physical Location of Licensed Premises Address: 4928 S Power Rd Mesa Maricopa 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
5/1991	CURRENT	Vice President Legal Services Admin	Garden Fresh Restaurant Corp (dba Sweet Tomatoes) 15822 Bernardo Center Drive, Ste A San Diego CA 92127

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION ↓

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord	City	State	Zip
5/2008	CURRENT	Own	_____	_____	_____	_____
5/2002	5/2008	Own	_____	_____	_____	_____

If you checked the Manager box on the front of this form skip to # 15

14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?

☐ YES ☒ NO

If you answered YES, how many hrs/day? \_\_\_\_\_, and answer #14a below. If NO, skip to #15.

14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof) If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license.

☐ YES ☒ NO

15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?

☐ YES ☒ NO

In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest AND any traffic tickets and complaints that are alcohol or drug-related.

16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses PENDING against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints.

☐ YES ☒ NO

17. Have you or any entity in which you have held ownership, been an officer, member, director or manager EVER had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state?

☐ YES ☒ NO

18. Has anyone EVER filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation?

☐ YES ☒ NO

19. Are you NOW or have you EVER held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state?

☐ YES ☒ NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement. Give complete details including dates, agencies involved, and dispositions.

SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED

20. I, Kathleen Etienne Salerno, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)

filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

x Kathleen E Salerno  
(Signature of Applicant) 8-14-12

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Month Year

My commission expires on: \_\_\_\_\_

Day Month Year

(Signature of NOTARY PUBLIC)

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license. The manager named must be at least 21 years of age.

State of \_\_\_\_\_ County of \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

x \_\_\_\_\_  
Signature of Controlling Person or Agent (circle one)

Month Year

Print Name

(Signature of NOTARY PUBLIC)

My commission expires on: \_\_\_\_\_

Day Month Year

12 AUG 21 11:47 AM '12

12 AUG 20 11gr. Dept AM1004

# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of San Diego

On 8/14/12

Date

before me,

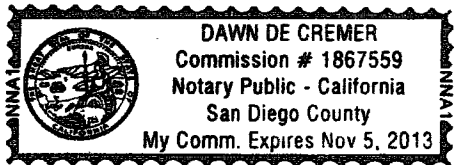
Dawn De Cremer Notary Public

Here Insert Name and Title of the Officer

personally appeared

Kathleen E Salerno

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she they executed the same in his her their authorized capacity(ies), and that by his her their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Dawn De Cremer

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

### Description of Attached Document

Title or Type of Document:

AZ Driver License Questionnaire #110

Document Date:

8/14/12

Number of Pages:

2

Signer(s) Other Than Named Above:

none

### Capacity(ies) Claimed by Signer(s)

Signer's Name:

Kathleen E Salerno

Signer's Name:

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing:

Garden Fresh Restaurant Corp

☐ Individual

☐ Corporate Officer — Title(s):

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other:

RIGHT THUMBPRINT  
OF SIGNER  
Top of thumb here

Signer Is Representing:

## ARIZONA DEPARTMENT OF LIQUOR LICENSES &amp; CONTROL

12 AUG 20 11:47 AM 10004

800 W Washington 5th Floor  
Phoenix AZ 85007-2934  
(602) 542-5141

## QUESTIONNAIRE

802-868

P1067782 JB

Attention all Local Governing Bodies: Social Security and Birthdate Information is Confidential. This information may be given to local law enforcement agencies for the purpose of background checks only but must be blocked to be unreadable prior to posting or any public view.

Read carefully. This instrument is a sworn document. Type or print with BLACK INK.  
An extensive investigation of your background will be conducted. False or incomplete answers could result in criminal prosecution and the denial or subsequent revocation of a license or permit.

TO BE COMPLETED BY EACH CONTROLLING PERSON, AGENT, OR MANAGER. EACH PERSON COMPLETING THIS FORM MUST SUBMIT AN "APPLICANT" TYPE FINGERPRINT CARD AVAILABLE AT THIS OFFICE. FINGERPRINTS ON FBI-APPROVED CARDS ARE ACCEPTED FROM LAW ENFORCEMENT AGENCIES, BONA FIDE FINGERPRINT SERVICES, OR THE DEPARTMENT OF LIQUOR. THE DEPARTMENT CHARGES A \$13 FEE.

In addition to other fingerprint fees, a \$22 DPS background check fee will be charged for each fingerprint card.

The fees allowed by A.R.S. § 44-6852 will be charged for all dishonored checks.

Liquor License #

12079241

(If the location is currently licensed)

1. Check appropriate box →

☐ Controlling Person☐ Agent

(Complete Questions 1-19)

Controlling Person or Agent must complete #21 for a Manager

☒ Manager (Only)(Complete All Questions except # 14, 14a & 21)

Controlling Person or Agent must complete # 21

2. Name: ANDERSON RICHARD ALLEN Date of Birth \_\_\_\_\_  
Last First Middle (NOT a public record)

3. Social Security Number: \_\_\_\_\_ Drivers License #: \_\_\_\_\_ State: AZ

(NOT a public record) MONTANA

(NOT a public record)

4. Place of Birth: Miles City MT U.S.A. Height: 5-11 Weight: 175 Eyes: Blue Hair: Brown  
City State Country (not county)

5. Marital Status ☐ Single ☒ Married ☐ Divorced ☐ Widowed

6. Name of Current or Most Recent Spouse: ANDERSON Kimberly Ann Black Date of Birth \_\_\_\_\_  
(List all for last 5 years - Use additional sheet if necessary) Last First Middle Maiden (NOT a public record)

7. You are a bona fide resident of what state? AZ ARIZONA If Arizona, date of residency: August 1993

8. Telephone number to contact you during business hours for any questions regarding this document. \_\_\_\_\_

9. If you have been an Arizona resident for less than three (3) months, submit a copy of your Arizona driver's license or voter registration card.

10. Name of Licensed Premises: Sweet Tomatoes #110 Premises Phone: 480 333 0022

11. Physical Location of Licensed Premises Address: 4928 S. Power Rd Gilbert Mariqua 85212  
Street Address (Do not use PO Box #) City County Zip

12. List your employment or type of business during the past five (5) years. If unemployed part of the time, list those dates. List most recent 1st.

FROM Month/Year	TO Month/Year	DESCRIBE POSITION OR BUSINESS	EMPLOYER'S NAME OR NAME OF BUSINESS (street address, city, state & zip)
01/96	CURRENT	General Manager	Sweet Tomatoes 4928 S. Power Rd Mesa AZ 85212

ATTACH ADDITIONAL SHEET IF NECESSARY FOR EITHER SECTION

13. Indicate your residence address for the last five (5) years:

FROM Month/Year	TO Month/Year	Rent or Own	RESIDENTIAL Street Address If rented, attach additional sheet with name, address and phone number of landlord	City	State	Zip
08/96	CURRENT	Own	_____	_____	_____	_____

If you checked the Manager box on the front of this form skip to # 15

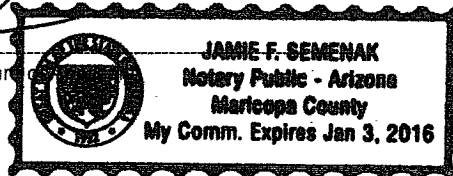
14. As a Controlling Person or Agent, will you be physically present and operating the licensed premises?  
If you answered YES, how many hrs/day? \_\_\_\_\_, and **answer #14a below**. If NO, skip to #15. ☐ YES ☐ NO
- 14a. Have you attended a DLLC-approved Liquor Law Training Course within the past 5 years? (Must provide proof)  
If the answer to # 14a is "NO", course must be completed before issuance of a new license or approval on an existing license. ☐ YES ☐ NO
15. Have you been cited, arrested, indicted or summoned into court for violation of ANY law or ordinance, regardless of the disposition, even if dismissed or expunged, within the past ten (10) years?  
In addition, please include all traffic tickets and complaints within the last ten (10) years that resulted in a warrant for arrest **AND** any traffic tickets and complaints that are alcohol or drug-related. ☐ YES ☒ NO
16. Are there ANY administrative law citations, compliance actions or consents, criminal arrest, indictments or summonses **PENDING** against you or ANY entity in which you are now involved? Include only criminal traffic tickets and complaints. ☐ YES ☒ NO
17. Have you or any entity in which you have held ownership, been an officer, member, director or manager **EVER** had a business, professional or liquor application or license rejected, denied, revoked, suspended or fined in this or any other state? ☐ YES ☒ NO
18. Has anyone **EVER** filed suit or obtained a judgment against you, the subject of which involved fraud or misrepresentation? ☐ YES ☒ NO
19. Are you NOW or have you **EVER** held ownership, been a controlling person, been an officer, member, director or manager on any other liquor license in this or any other state? ☐ YES ☒ NO

If any answer to Questions 15 through 19 is "YES" YOU MUST attach a signed statement.  
Give complete details including dates, agencies involved, and dispositions.

**SUBSTANTIVE CHANGES TO THIS APPLICATION WILL NOT BE ACCEPTED**

20. I, RICHARD ALLEN ANDERSON, hereby declare that I am the APPLICANT/REPRESENTATIVE  
(print full name of Applicant)  
filing this questionnaire. I have read this questionnaire and all statements are true, correct and complete.

x [Signature]  
(Signature)



My commission expires on:

1-3-16  
Day Month Year

State of AZ County of MARICOPA

The foregoing instrument was acknowledged before me this  
18 day of AUGUST, 2012  
Month Year

[Signature]  
(Signature of NOTARY PUBLIC)

**COMPLETE THIS SECTION ONLY IF YOU ARE A CONTROLLING PERSON OR AGENT  
APPROVING A MANAGER'S APPLICATION**

21. The applicant hereby authorizes the person named on this questionnaire to act as manager for the named liquor license.  
The manager named must be at least 21 years of age.

State of AZ County of MARICOPA

The foregoing instrument was acknowledged before me this

18 day of AUGUST, 2012  
Month Year

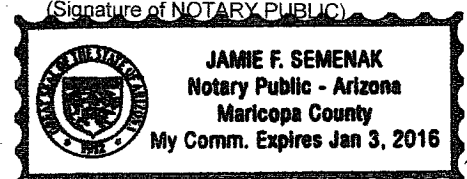
[Signature]  
(Signature of NOTARY PUBLIC)

x [Signature]  
Signature of Controlling Person or Agent (circle one)

Nate Lellan  
Print Name

My commission expires on:

1-3-16  
Day Month Year



Arizona Department of Liquor Licenses and Control  
 800 West Washington, 5th Floor  
 Phoenix, Arizona 85007  
 www.azliquor.gov  
 602-542-5141

\*12 AUG 20 11:47 AM '12

### CERTIFICATE OF TITLE 4 TRAINING COMPLETION

Do Not Duplicate This Form

Certificates must be completed by a state-approved training course provider, in black ink, on an original form.

RICHARD ALLEN ANDERSON

Full Name (please print)

[Signature]

Signature

8-1-2012

Training Completion Date

8-1-2017

Certificate Expiration Date  
 (MANAGEMENT - 5 years from completion date)  
 (BASIC - 3 years from completion date)

Type of Training Completed (check Yes or No)

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	BASIC	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	ON SALE
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	MANAGEMENT	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	OFF SALE
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	BOTH	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	OTHER

If Trainee Is Employed By A Licensee

NATLUE LAHR

Name of Licensee

SWEET TOMATOES

Business Name

Liquor License #

### Alcohol Training Program Provider Information

Arizona Alcohol Traffic & Firearms

Company or Individual Name (please print)

P.O. Box 6252

Address

Chandler

AZ

85246

( 888 )

723

7078

City

State

Zip

Daytime Contact Phone #

I certify the above named individual has successfully completed the training specified above in accordance with Arizona Revised Statute, Arizona Administrative Code, and the training course curriculum approved by the Department of Liquor Licenses and Control:

Jared Repinski

Name of Trainer (please print)

[Signature]

Trainer Signature

8-1-2012

Date

Pursuant to A.R.S. § 4-112(G)(2), mandatory Title 4 liquor law training is required prior to the issuance of all new liquor license applications submitted after November 1, 1997.

The persons(s) required to attend both the BASIC and MANAGEMENT Title 4 liquor law training, on- or off-sale, will include all of the following:

Owner(s)

Licensee/agent or manager(s) actively involved in daily business operation

A valid (not expired) Certificate of Title 4 Training Completion must be submitted to the Department of Liquor Licenses and Control before a liquor license application is considered complete.

Before acceptance of a manager's questionnaire and/or agent change for an existing liquor license, proof of attendance for the BASIC and MANAGEMENT Title 4 liquor law training (on- or off-sale) is required.